

**Final Report on the
Request for Proposal for:
Independent Organization for Program
Evaluation and Quality Assurance**

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New Hampshire Department of Education
Bureau of Special Education
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Executive Summary

Background

The proposal submitted by Data Driven Enterprises (DDE) and approved for funding by the New Hampshire Department of Education (NHDOE) Special Education Bureau specified that the evaluation should cover these questions:

1. What are the components of the NHDOE monitoring and program approval process?
2. Are performance and/or compliance data used in the monitoring and program approval process? If so, are they used in the process of selecting districts to monitor? Are they used to guide monitoring activities?
3. To what extent are monitoring instruments and the monitoring process capable of identifying compliance/noncompliance with the program requirements? To what extent are they capable of improving student results and outcomes? Does it emphasize those requirements most closely associated with student results/outcomes? Is the system capable of making systemic findings? Is the system capable of making substantive findings?
4. Are the findings made by monitoring reports clear? Is the evidence set forth in reports adequate to support the findings made? Are the reports released in a timely manner? Are systemic findings made? Are substantive findings made?
5. Do Corrective Action Plans (CAPs) set forth activities reasonably calculated to result in compliance? Are CAPs developed and approved in a timely manner? How is implementation of CAPs tracked? What process is used to verify the performance of corrective activities? Is the process adequate? What is the process of verifying that noncompliance has been corrected? Is the process adequate?
6. Are enforcement steps taken when necessary? If so, are those steps adequate to resolve the identified noncompliance in a timely and effective manner?
7. What is the Department's process for making annual determinations of public agencies responsible for delivering special education services? What standards are used? To what extent do the standards used comport with the requirements of the IDEA?
8. Do statewide data show changes over time on performance and compliance indicators? Is there evidence that indicates that the monitoring and program approval processes are having a positive effect on student results/outcomes and

on compliance with the program requirements? Does the state have an adequate system for verifying the accuracy of data?

9. Are staffing resources sufficient to implement a monitoring and program approval process capable of ensuring FAPE in the LRE and improved results/outcomes to NH students with disabilities?

10. What are the recommendations that should be given to the NDHOE given the findings?

This report answers these ten questions.

Evaluation Highlights

Positive Points:

- Performance data are used to select districts for Focused Monitoring.
- The monitoring processes related to some State Performance Plan Indicators (e.g., timeliness of initial assessments, timely Part C to Part B transition) are reliable, and the State's performance on these indicators has improved markedly over the last few years.
- School districts monitored through Focused Monitoring have generally positive feelings about the process and the results.
- The processes for verification of the correction of noncompliance identified through monitoring related to Indicators 11, 12 and 13 as described in the Annual Performance Report appear to be reliable.
- The state has improved since the 2004-05 school year at ensuring the correction of identified noncompliance within one year.
- The analysis of 2007-08 through 2010-11 proficiency data suggests that the Focused Monitoring system is fulfilling the first purpose of increasing achievement of students with disabilities. This same data suggests, however, that the second purpose of narrowing the achievement gap is not being differentially impacted by the focused monitoring system.
- Considered from the date of the monitoring report, the development of corrective action plans is timely.

Areas for Improvement:

- Neither performance nor compliance data are used in either the Focused Monitoring or Program Approval processes to the extent necessary for effective monitoring of the provision of a free, appropriate public education in the least restrictive environment.

- Findings of noncompliance rely almost exclusively on the results of file reviews unsupported by the results of other monitoring activities (interviews, observations, provider time logs, etc.).
- Both the Focused Monitoring and the Program Approval processes are capable of identifying *some* noncompliance. However, due to serious deficiencies in the both the instruments used to collect information from files and the inconsistent application of those instruments by monitoring teams, the current system is not capable of making many important substantive findings of noncompliance.
- The monitoring processes currently used make no substantive findings that students were deprived of FAPE or were not placed in the LRE. The majority of findings made are procedural in nature.
- As the relevant documents were not made available to the evaluators, judgments could not be made regarding the adequacy of current processes for verifying the correction of noncompliance identified through the Focused Monitoring and Program Approval processes.
- The monitoring processes related to some State Performance Plan Indicators (e.g., suspension/expulsion, disproportionality) are weak with respect to actual practices.
- The LRE aspect of the monitoring processes is particularly weak.
- Although the analysis of 2007-08 through 2010-11 proficiency data suggests that the Focused Monitoring system is fulfilling the first purpose of increasing achievement of students with disabilities, this same data suggests that the second purpose of narrowing the achievement gap is not being differentially impacted by the focused monitoring system.
- The analysis of 2007-08 through 2010-11 placement data suggests that a majority of districts monitored through the Focused Monitoring system increased the percentage of students placed in the regular classroom between 2007-08 and 2010-11. However, a higher percentage of non-monitored districts increased the percentage of students placed in the regular classroom between 2007-08 and 2010-11.
- The state does not currently use performance indicators as part of its process of making determinations of local school districts.
- The evaluators cannot determine whether the total number of employees available for monitoring from the state and its vendor is adequate. It is reasonably clear that vendor staffing levels are sufficient to implement the Focused Monitoring and Program Approval processes as those processes are currently constituted, and that state general supervision and monitoring staffing is lacking. At the same time, however, it is clear from the results of this evaluation that there are significant flaws in monitoring processes, and that correction of these deficiencies is likely to require staffing adjustments.

Additional Points Raised

- Disadvantages of contracting out the Focused Monitoring and Program Approval monitoring processes are discussed, and specific concerns related to contracting with the current vendor are raised.
- The Focused Monitoring process is not listed as an improvement activity for appropriate indicators in the State Performance Plan.
- For the most part, random, rather than purposeful, samples of students are used in the Focused Monitoring and Program Approval processes.
- Monitoring reports are not consistently clear regarding the purpose of monitoring. The reports are not consistently clear regarding the actual statutory requirement violated, the specific basis for findings of noncompliance, and the exact actions needed to correct noncompliance.
- The monitoring reports include "suggestions" for improvement on issues subject to statutory requirements.
- Findings contained in monitoring reports are not always supported by adequate evidence.
- Monitoring reports are not always issued in a timely manner.
- The distinction in monitoring reports between systemic and individual findings is clear in some instances, but not in others.
- A number of concerns related to corrective actions for both individual and systemic findings of noncompliance, and the timeliness of corrective actions, are discussed and analyzed.
- The tracking and verification of the implementation of corrective actions is not always thorough and consistent.
- Based on the few enforcement documents available to the evaluators, it is unclear that the four factors state regulations require NHDOE to consider when selecting enforcement action were in fact considered and, if so, to what extent. In addition, concerns are noted regarding the steps taken in one circumstance in which correction of noncompliance was not achieved within one year.
- Concerns are raised regarding the accuracy of the state's placement data.

Recommendations are offered in Section X.

Section I

What are the components of the New Hampshire Department of Education (NHDOE) monitoring and program approval process?

Federal Monitoring Requirements

The federal statute, the Individuals with Disabilities Education Act (IDEA) requires state educational agencies (SEAs) to monitor and enforce the implementation of the IDEA, and to report annually on performance. The primary focus of an SEA's monitoring activities must be on

- Improving educational results and functional outcomes for all children with disabilities, and
- Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements most closely related to improving educational results for children with disabilities.

In addition, SEAs must use quantifiable indicators and such qualitative indicators as are needed to measure performance adequately on the indicators promulgated by the U. S. Department of Education (USDOE), and must monitor the Local Education Agencies (LEAs) located in the State using indicators adequate to measure performance in:

- Provision of a free appropriate public education (FAPE) in the least restrictive environment (LRE),
- State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services, and
- Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.¹

In the state performance plan (SPP) submitted by each SEA, "measurable and rigorous targets" must be established for each USDOE-promulgated indicator.²

Further, states must

...adopt and use proper methods of administering each applicable program, including: monitoring of agencies, institutions, and

¹ 34 C.F.R. § 300.600

² 34 C.F.R. § 300.601

organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law; providing technical assistance, where necessary, to such agencies, institutions, and organizations; encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations; the dissemination throughout the State of information on program requirements and successful practices; and the correction of deficiencies in program operations that are identified through monitoring or evaluation.³

State Monitoring Requirements

State statute and regulations contain additional requirements. The statute (Title XV, Chapter 186-C:5) requires the State Board of Education to adopt rules to establish a process of, and standards for, approval and monitoring of public and private education programs, programs that are "for the benefit of children with disabilities."⁴ The statute describes the purpose of program approval and monitoring as compliance with applicable state and federal law "including standards related to improving educational results and functional outcomes."⁵ Further, the standards and procedures that are developed and applied to determine compliance with legal requirements "shall give considerable weight to rigorous benchmarks or performance outcomes and indicators" that are "most relevant to achieving educational results and functional outcomes."⁶ Program approval and monitoring must also include, but not be limited to:

- outcome or indicator data reporting;
- ensuring data accuracy, including "necessary on-site verification," and determining whether the data are accurate;
- on-site monitoring to "further" evaluate noncompliance, verify the accuracy of data, assess the adequacy of corrective action plans (CAPs)/CAP implementation, or other purposes;
- on-site monitoring "may" include regular/periodic monitoring, special monitoring related to complaints or based on "reliable information" indicating noncompliance with standards, and random or targeted visits that "may" be unannounced;
- monitoring, including on-site monitoring, must use "multiple program evaluation techniques" that accord with professional standards and includes, but is not limited to, stratified random sampling⁷; and

³ 20 U.S.C. 1232d (b) (3) (GEPA)

⁴ 186-C:5 (I) (a)

⁵ 186-C:5 (II)

⁶ 186-C:5 (III)

⁷ 186-C:5 (III)

- determinations of whether the district is making "diligent efforts" to resolve personnel shortages that result in students being placed out of district.⁸

In addition to specifying training for team members, the statute also sets forth the minimum composition of monitoring teams (at least one educator, one administrator, and one parent), and allows the Department to use less than a full team for some on-site visits if a full team is not necessary. Geographic and employment limitations on eligibility to serve as parent and educator/administrator team members are also included, and the Department is urged to "balance" teams with professionals from outside school districts (such as higher education professionals) and to "ensure...a diversity of perspectives and high-quality professional membership" on monitoring teams. The statute allows NHDOE to contract with an individual or organization to "perform the monitoring activities," as long as that individual or organization "is otherwise independent from school district or non-school district programs" in the state.⁹

State regulations require an annual, comprehensive request for special education funds; approved requests are necessary in order to receive state and federal funds. LEA requests for funds must include full and accurate descriptions of its policies and procedures with respect to the provision of FAPE. LEA requests for funds are also required to address twelve separate components; one of these is a program evaluation component, which is to include a plan "aimed at complying" with the findings of an on-site compliance monitoring report.¹⁰

Program approval of public and non-public programs is required to be conducted through a monitoring process that includes review of documents and on-site visits. The areas required to be reviewed include staff certification and professional development (PD), policies and procedures, fiscal and physical plant aspects of the program, compliance with state and federal requirements including LRE practices; for LEA program approval, reviews are also required of placement practices and the LEA request for funds.¹¹

The program approval process is to culminate in a written report that grants full or conditional approval, or denies, suspends, or revokes approval. The report is to include findings regarding strengths, noncompliance, any failure to meet performance outcomes and indicators, and recommendations for needed actions to remedy noncompliance or failures to meet outcomes and indicators.¹² A reconsideration process is also included if the LEA or non-public program disagrees with the report, and the regulations call for a "corrective action/improvement plan" to be submitted to correct any student-specific or systemic noncompliance found. The plan is to include proposed activities, timelines, evidence of activity completion, and

⁸ 186-C:5 (I) (b)

⁹ 186-C:5 (III) (f)

¹⁰ Ed 1126.01

¹¹ Ed 1126.02

¹² 186-C:5 (IV)

an assurance from the LEA superintendent that the plan will be implemented within timeline. CAPs can be accepted, rejected or modified by NHDOE.¹³

The NH Monitoring System

The most recent annual performance report (APR) provides the following succinct overview of the many processes used by NHDOE in monitoring:

The NHDOE monitors districts through many components of its general supervision system. For this indicator [15], the NHDOE reported on noncompliance identified in districts through: data reviews, desk audits, onsite monitoring, and focused monitoring. Noncompliance was also identified through complaints and due process hearings. Several APR indicators were monitored in all districts through a desk audit process for compliance.

The NHDOE also monitored approved private special education schools. This monitoring occurs on a cyclical basis. When child specific findings of noncompliance were identified in these approved private special education schools, the finding was made against the LEA responsible for the child.¹⁴

The NH SPP, revised in 2011, describes a cyclical monitoring process, in which a district or approved nonpublic program may be approved for up to five years if the program "demonstrates strong competency and compliance in all areas." A case study compliance review is participated in by the district or program; a student's case (IEP and program implementation) is presented to the monitors by staff. An option to participate as a Yearlong Improvement Site is also described, and involves a self-assessment and data-driven improvement process. When issues of noncompliance are found, the district/program submits a corrective action plan, and NHDOE follows up with technical assistance (TA) and recording of the documentation submitted that demonstrates correction of the noncompliance.¹⁵ The most recent version of the SPP describes the monitoring system in a similar manner.¹⁶ The SPP includes an improvement activity for 2006-07 of transitioning to a focused monitoring (FM) model.¹⁷ That transition has occurred (see below).

The NH FM process is implemented by a vendor, the Southeastern Regional Education Services Center (SERESC). According to its website, SERESC's mission is to "engage, support and inspire learning."¹⁸ Its Board of Directors is composed of School

¹³ Ed 1126.03

¹⁴ *FFY '10 APR*, p. 92.

¹⁵ 2011 Revised *SPP*, p. 86-87.

¹⁶ 2012 Revised *SPP*, pp. 87-88.

¹⁷ 2011 *SPP*, p. 90; 2012 *SPP*, p. 91.

¹⁸ <http://www.seresc.net/about-us/mission>

Administrative Unit (SAU) superintendents and school board members.¹⁹ With respect to monitoring and program approval, a contract with SERESC has been in place for more than two decades "to shape its special education program approval work in a way that drives and supports results for children and youth with disabilities."²⁰

A Memorandum of Understanding (MOU) sets forth the terms of the relationship between NHDOE and SERESC.²¹ The document makes clear that NHDOE has prior approval of most of the monitoring-related activities engaged in by SERESC, including dissemination of materials related to the monitoring, training materials for team members, monitoring reports, corrective action plans, and the ultimate verification of the correction of any findings of noncompliance. The only exceptions appear to be the scheduling of monitoring visits. Bi-weekly supervision by NHDOE of FM data collection activities and monthly meetings of NHDOE's and SERESC's project directors (Santina Thibedeax and Jane Bergeron, respectively) and SERESC monitoring teams are also called for in this document.

This revised MOU came about in response to corrective actions ordered by USDOE as a result of its 2009 verification visit. OSEP concluded that NHDOE had not "exercised adequate supervision and control over its contractor"; NHDOE was directed to provide a revised MOU that highlighted "the oversight of the contractor's findings of noncompliance and the verification of correction, and the mechanism by which SEA personnel make decisions regarding the identification, and verification of correction, of noncompliance."²² In addition, OSEP wrote:

...the State was not able to provide evidence that the SEA is ensuring that the contractor correctly identifies and verifies the correction of noncompliance. The SEA acknowledged that, while the State has a system in place for SEA oversight and review of the contractor's activities, the system has not been effective. The State has permitted the contractor to exercise discretion in making decisions about noncompliance and the level of correction needed without sufficient supervision by the SEA. While the State may contract out many processes of its monitoring system, the SEA is responsible for making decisions regarding the identification, and verification of correction, of noncompliance.²³

¹⁹ <http://www.seresc.net/about-us/board-of-directorsexecutive-board>

²⁰ <http://www.seresc.net/our-programs/special-education-program-approval>. On the longstanding nature of this contractual arrangement for monitoring, see also OSEP, *1994 Review of the New Hampshire Department of Education's Implementation of Part B of the Individuals with Disabilities Education Act*, August 1994, pp. vii, 3. There SERESC is described as "an organization which was formed by local school districts to plan and implement educational programs for children with disabilities" (p. 3).

²¹ NHDOE/SERESC MOU, 3/22/10.

²² OSEP 2009 verification visit letter enclosure, 1/15/10, p. 3.

²³ OSEP 2009 verification visit letter enclosure, 1/15/10, p. 2.

The MOU apparently resolved issues related to the NHDOE/SERESC relationship to OSEP's satisfaction.

The effectiveness of the aspects of the NHDOE monitoring system implemented by SERESC will be discussed throughout this report. But three points unrelated to either the system's effectiveness or to the issues raised by OSEP are in order.

First, as noted above, the state statute allows NHDOE to contract with an individual or organization to perform monitoring activities, as long as that individual or organization "is otherwise independent from school district or non-school district programs" in the state.²⁴ As also noted above, SERESC's Board of Directors is composed of SAU superintendents and school board members.²⁵ While the evaluators will not express an opinion regarding whether contracting with such an entity violates the prohibition in the state statute, clearly such an argument could be advanced in a challenge to the state's current monitoring system. Thus the monitoring system has an area of potential legal vulnerability it would not have under a different arrangement.

Second, state IDEA monitoring systems operate in a political context, one that includes multiple stakeholders with perspectives that sometimes differ from each other's--school districts, private schools, parents, advocacy groups and, at times, political figures such as state legislators. It is crucial that SEAs are, and are perceived as, honest brokers when making compliance judgments through a monitoring system. Contracting for monitoring with an organization that may be perceived by some as an extension of school districts, and/or as biased toward school district perspectives, can harm an SEA's status as a fair and impartial finder of compliance facts through its monitoring system.

Third, as OSEP points out, it is allowable under IDEA for a state to contract out aspects of its monitoring processes so long as the SEA has, and exercises, final authority over decisions regarding noncompliance. Further, such arrangements are not uncommon nationally, and sometimes include the use of contract monitors serving under SEA leadership on monitoring teams, and the use of contractual coaches and mentors to provide intensive technical assistance in and to districts having compliance difficulties that have not been resolved in a timely manner. However, contracting out major pieces of a monitoring system to another organization, as is currently the case in NH, can prevent the SEA from developing its own internal compliance capacity, a capacity that is very important for SEAs to have and use for activities other than on-site monitoring (for example, in indicator monitoring, complaint investigations, and provision of technical assistance). In addition, resentment can be caused among SEA staff if there is also a perception that the vendor offers more generous salaries or benefits than the SEA itself.

²⁴ 186-C:5 (III) (f)

²⁵ <http://www.seresc.net/about-us/board-of-directorsexecutive-board>

Focused Monitoring

After a small pilot in 2006-07, NHDOE discontinued its former cyclical monitoring process and implemented an FM process during the 2007-08 school year. A stakeholder committee composed of parents, teachers, specialists, administrators and special education advocacy groups chose the statewide assessment achievement gap between students with and those without disabilities as the key performance indicator to guide the selection of districts to be monitored.

The compliance aspect of the process revolves around a review of students who are randomly selected. In addition, technical assistance on an ongoing basis is provided in order to assist in the narrowing of the achievement gap. The outcomes expected from this process are:

- a systems approach to narrowing the achievement gap between typical students and students with disabilities
- Educational decisions based on student performance data
- Compliance connected to students' educational benefit
- Increased parent involvement in the special education program approval process
- Significant change in how special education services and curriculum, instruction and assessment are delivered to student with disabilities
- Closer collaboration between special educators and general educators.²⁶

Program Approval

According to the NHDOE website, the program approval process is "designed as a self-assessment review" of private schools. The case study compliance review is required at the time of program approval, and an optional yearlong improvement process is made available to schools during the approval year.²⁷

The case study compliance review process is explained in the following manner:

In preparation for the NHDOE visit, teams of general and special educators work together to gather and analyze student work and other relevant information to describe the programs and progress of randomly selected special education students. The process may include a timeline of each student's educational experiences and services, work samples, IEP, progress reports, assessment information, and any other information that contributes to a full picture of the student's school experience. At the Case Study Compliance Review, the information

²⁶ http://www.education.nh.gov/instruction/special_ed/focused_monitoring.htm

²⁷ http://www.education.nh.gov/instruction/special_ed/program_approval.htm

collected will be presented to a volunteer team of visiting New Hampshire educators. In addition, classroom observations will be conducted and interviews will be held with parents, students, school administrators and school board members.²⁸

The optional yearlong improvement process is described as "a data-driven school improvement planning process closely aligned with assessing compliance with state and federal special education regulations." The components include the formation of an Improvement Team and identification of a facilitator; developing a profile, defining beliefs and mission, and defining the focus; collecting and analyzing data relevant to the area of focus; conducting the required case study compliance review; and producing a final report. Six sites are said to be engaged in this process during the current school year.²⁹

Indicator Monitoring

The extent to which NHDOE is engaging in compliance monitoring related to SPP indicators, the methods by which it does so, and the adequacy of those methods are discussed in Section II of this report.

Federal Oversight of NHDOE General Supervision

USDOE and states are required to make annual determinations of state and local performance, respectively, based on indicator data, monitoring findings and other information. The four possible determinations are: meets requirements, needs assistance, needs intervention, and needs substantial intervention.³⁰ For the standards used in NHDOE determinations of school districts, see Section VII.

The table below displays the USDOE determinations of NHDOE in recent years and the reason(s) for the determinations:

Year	Determination	Rationale
FFY 2005	Needs Assistance	Indicator 1 (graduation): did not provide valid and reliable data; Indicator 2 (drop out): did not provide valid and reliable data; Indicator 12 (C to B transition): 65% compliance; and Indicator 15 (correction of noncompliance within one year): 72% compliance. ³¹
FFY 2006	Needs	Indicator 15: 72% compliance. ³²

²⁸ http://www.education.nh.gov/instruction/special_ed/case_study.htm

²⁹ http://www.education.nh.gov/instruction/special_ed/improvement_process.htm

³⁰ 34 CFR § 300.603; 34 CFR § 300.600

³¹ OSEP FFY '05 APR letter, 6/15/07, p. 2.

Year	Determination	Rationale
	Assistance	
FFY 2007	Needs Assistance	Indicator 13 (transition): 56% compliance and "did not report correction"; Indicator 12: 92% compliance and "did not report correction"; Indicator 15: 91% compliance; and Indicator 20 (timely/accurate data): 89% compliance. ³³
FFY 2008	Needs Assistance	Indicator 16 (timely complaint resolutions): 22% compliance; and Indicator 20: 90.47% compliance. ³⁴
FFY 2009	Needs Assistance	Indicator 16: 60% compliance; and Indicator 20: 92% compliance. ³⁵

Aspects of federal analyses of NHDOE APRs and results from federal verification visits, pertinent to specific indicators or NHDOE monitoring activities, are embedded in the relevant sections of this report.

³² OSEP FFY '06 APR letter, 6/6/08, p. 1.

³³ OSEP FFY '07 APR letter, 2009 date illegible, p. 1.

³⁴ OSEP FFY '08 APR letter, 6/3/10, p. 1.

³⁵ OSEP FFY '09 APR letter, 6/20/11, p. 1.

Section II

Are performance and/or compliance data used in the monitoring and program approval process? If so, are they used in the process of selecting districts to monitor? Are they used to guide monitoring activities?

SERESC's most recent annual report sets forth the following goals of the program approval and focused monitoring process:

Goal 1: To establish and maintain an effective New Hampshire Special Education Program Approval and Improvement Process that aligns with IDEA 2004, supports the priorities identified in the State Performance Plan (SPP) and includes an expanded parent role, *to ensure that all NH children and youth with disabilities have a free appropriate public education (FAPE) in the least restrictive environment (LRE) that promotes a high quality education.*

Goal 2: To work collaboratively with NHDOE, Bureau of Special Education and key NH Stakeholders in the design of an effective, data driven Focused Monitoring System (FMS) that includes an expanded parent role and *ensures all NH children and youth with disabilities an opportunity to receive FAPE in the LRE that promotes a high quality education.*

Goal 3: To establish and maintain an effective, accessible data collection process and system that yields statewide data obtained through the Program Approval and Improvement Process.³⁶

The italicized portions above express in truncated form some important aspects of the statutory relation between receipt of FAPE in the LRE, quality educational results and outcomes, and monitoring set forth at the beginning of this report: if students' IEPs are truly based upon their unique needs as assessed by qualified and knowledgeable personnel, and are crafted with parental participation and input; if students receive high-quality instruction and related services from qualified staff; and if students are placed in settings no more restrictive than necessary to implement their IEPs; quality student outcomes will be a more likely result than if these conditions are not met. Thus, students will drop out of school at lower rates, graduate at higher rates, attend school with greater frequency, participate in statewide assessments at higher rates, and demonstrate proficiency on such assessments at higher rates. The IDEA rests on this foundational assumption, an assumption expressed in the so-called "related requirements" monitoring priority. The task of a special education

³⁶ *Special Education Program Approval and Improvement Process 2010-2011 Year End Summary Report*, 12/21/11, p. 5; emphasis added.

monitoring system is to ascertain the extent to which the conditions noted above are being met and to ensure timely correction if these conditions are not being met.

Hence, effective focused or performance-based monitoring systems use performance data and other information (such as compliance data, complaints, parental survey results, etc.) to select districts for monitoring and to focus monitoring activities on issues and students the data and information suggest may not be receiving FAPE in the LRE – the heart of compliance under IDEA.

Focused Monitoring

SERESC describes the goal of NH Focused Monitoring (FM) as "support[ing] improved learning results for *all* students and...narrow[ing] the achievement gap between students with disabilities and their non-disabled peers." This clearly is an ambitious and laudable goal. On the same page of this report, the "purpose" of FM is defined more narrowly: it "is to improve educational results and functional outcomes for *all children with disabilities* by maximizing resources and emphasizing important variables in order to increase the probability of improved results."³⁷ This expression of the purpose of FM is focused on the performance of students with disabilities.

The key performance indicator (KPI) used each year of FM in NH to guide the system's selection of districts is the gap in performance between students with and those without disabilities. Districts are divided into six cohort groups by enrollment size, and the districts in each cohort group with the largest gaps in performance are selected for FM.³⁸

Twenty-four LEAs monitored between 2007-08 and 2010-11 were surveyed by the evaluators. When asked, "Why was your district chosen for focused monitoring?" 12 of the 17 districts (71%) that responded mentioned performance-based data. Eleven districts specifically mentioned the achievement gap; one mentioned that their district did not make AYP.

One might expect that the ultimate purpose or goal of selecting the gap in performance as the state's KPI would be to improve the performance of students with disabilities relative to their nondisabled peers. However, the FM system, processes, and KPI are not listed among the improvement activities for Indicator 3C (proficiency rate on state assessments for students with IEPs) in the most recent SPP.³⁹ In addition, although gaps in both graduation and drop-out rates are noted in the SPP, the FM system and process are not mentioned there as improvement activities to close those gaps.⁴⁰

Districts receiving FM visits are required to create an Achievement Team, which is composed of district administrators, special and general educators, parents, and a member experienced in data analysis. The team is assisted by two technical

³⁷ 2010-2011 Year End Summary Report, p. 19; emphases added in both quotes.

³⁸ 2010-2011 Year End Summary Report, pp. 20-21.

³⁹ 2012 SPP, pp. 21-23.

⁴⁰ 2012 SPP, pp. 4, 5-8; 11-15.

assistants and is said to meet regularly to analyze student performance data, set forth findings from that analysis, and create an action plan for improvement. The purpose of the analysis is to answer what is described as the "essential study question":

What are the contributing factors to the achievement gap between students with disabilities and their nondisabled peers, and how will this gap be narrowed?⁴¹

The study question phrased in this way does not focus solely on the compliance factors contributing to the achievement gap, but potentially on any contributing factors.

One required data collection activity is a "structured compliance review." This review is described as "a comprehensive review of all aspects of special education programming (Pre-K-12)," and includes reviews of policy and procedures, program descriptions, records of students in out-of-district placements, staff credentials and randomly selected IEPs. Decision rules regarding the random selection are also set forth in the SERESC annual report; however, these do not include anything related to the performance of the specific students to be selected.⁴² Hence, if students who are performing poorly are included in any of the random samples selected, that is the case by accident rather than design. That is not the case with respect to some students placed in restrictive settings, those placed out of district, as some of those students are reviewed by design.

In 2010-11, 93 student records were reviewed through the FM IEP review process⁴³; in 2009-10, 89 records were reviewed.⁴⁴ The annual reports do not make clear who (SERESC or district or both) is reviewing these records, and also do not make clear whether the results of other monitoring activities such as interviews or observations are also used to support any findings of noncompliance made. From the tables provided in the annual reports it appears to be the case that almost all of the findings are supported by record reviews alone.⁴⁵ Heavy reliance on file reviews, without enrichment by student-focused interviews and observations, limits the type of findings that a monitoring system can and will make.

The table below sets forth the types of findings made in the FM system in the last two school years⁴⁶:

⁴¹ 2010-2011 Year End Summary Report, pp. 19-20.

⁴² 2010-2011 Year End Summary Report, pp. 22-23.

⁴³ 2010-2011 Year End Summary Report, p. 9.

⁴⁴ Special Education Program Approval and Improvement Process 2009-2010 Year End Summary Report, 12/15/10, p. 8.

⁴⁵ One exception was one finding concerning a district's lack of compliant policies.

⁴⁶ See 2009-2010 Year End Summary Report, pp. 20-23; and 2010-2011 Year End Summary Report, pp.24-27.

Topic	Findings of Noncompliance
IEP Content	<ul style="list-style-type: none"> • goals not measurable • no statement of how student will participate in nonacademic/extracurricular and/or in regular class • does not call for access to general curriculum/does not meet student needs to make progress in general curriculum • no statement regarding how graduation credits toward regular diploma will be earned • lacks functional and/or academic goals, accommodations/modifications, required behavior plan, criteria for measurable progress • annual goals lack baselines and/or targets • lacks timeline for progress measurement • not identifying that behavior impedes learning (Special Factors) • not including services that address all needs of student/lack evidence that all needs addressed • lacks documentation that multiple measures used for decision making • lacks documentation that all student needs, strengths, interests addressed in student profile • lacks documentation that parent concerns included • lacks relation between student needs and goals • goals not containing objectives/benchmarks • lacks evidence of connection between benchmarks/objectives and annual goals • lacks present levels of performance or failure to describe how disability affects student participation
IEP Process	<ul style="list-style-type: none"> • IEP Teams lack all required members • transition IEP meeting invitation lacks student name
Progress Reporting	<ul style="list-style-type: none"> • not including evidence that progress sufficient to reach goal • not specific, meaningful and understandable • progress monitoring not consistently documented/no consistent process for general educator involvement • students with significant disabilities not provided same report cards used for general education
Evaluation	<ul style="list-style-type: none"> • evaluation summaries not in files • certified educator of suspected disability not present when decisions re: evaluation made
Transition	<ul style="list-style-type: none"> • plans lack all required components • plans do not comply with all requirements of Indicator 13 • no weekly monitoring of transition services

Topic	Findings of Noncompliance
	<ul style="list-style-type: none"> • no statement of transition service needs • no statement of transition service needs focusing on course of study
LRE	<ul style="list-style-type: none"> • preschool program lacks adequate integration with typically developing peers • no evidence LRE discussed • no plan to transition to less restrictive setting
Policies and Procedures	<ul style="list-style-type: none"> • lack of compliant written policies

It is surprising to see this breadth of noncompliance in a random sample (as opposed to a purposeful sample) of 182 students over two school years.

Moreover, the list of findings of noncompliance is notable for what it lacks: findings that students were deprived of FAPE by virtue of any of the violations found, and findings that students were not placed in the least restrictive environment in which their IEPs could be satisfactorily implemented. One apparent exception to the latter is the finding that a preschool program lacks adequate integration with nondisabled peers; however, that finding was made about a "program" serving a number of students rather than about any individual students and their specific programs (IEPs). Further, that finding makes no reference to any specific students' individual needs, IEPs, and their IEP teams' specific LRE determinations.

As to the former, the lack of findings that students were deprived of FAPE, many of the findings made by the system over the last two years (as captured in the table above) *could have been* part of such a FAPE finding *if* actual student performance had been considered. For example, not including services that address all the identified needs of a student can result in a significant deprivation of FAPE if the student's performance, behavior, and/or attendance are suffering in the area of need(s) not addressed in the IEP. But those types of connections are not made in the findings above, and the samples are not originally structured in a data-based manner such that students with performance, behavioral, and/or attendance concerns are purposefully included in the samples by design.

Program Approval

According to the SERESC annual report for 2010–2011, the use of data is considered a priority in New Hampshire's Program Approval process for private schools. The report states,

The NHDOE Special Education Program Approval activities continue to be designed to initiate data driven decision making efforts, bring forth the urgency to rise above looking at individual test scores to longitudinal analyses

and the further exploration of multiple data sources, i.e., demographic data, perceptual data and process data that can greatly impact and influence the 'achievement gap'.⁴⁷

Furthermore, while the Program Approval process is designed to ensure compliance with state and federal special education requirements, it also serves additional purposes:

NHDOE Special Education Case Study Compliance Reviews are conducted to ensure that private special education schools compliance with state and federal special education rules and regulations. While compliance is a focus, the reviews have evolved to emphasize partnerships with the NHDOE, in conducting monitoring activities that ensure job embedded professional development for the staff involved. The Case Study Compliance review process permits the Department of Education to leverage its impact for change and improvement within schools statewide by focusing the attention of all educators on three key areas of critical importance in the education of students with disabilities. The three areas that the Department of Education has determined to be in need of improvement are *Access to the General Curriculum, Transition, and Behavior Strategies and Discipline*.⁴⁸

SERESC's 2010 – 2011 Year-End Report also states that the Case Study – the primary vehicle used to identify noncompliance through the Program Approval process – has evolved to provide a "further emphasis on the development of strong accountability systems and the utilization of data to demonstrate improved learning results for students with disabilities."⁴⁹ The State's efforts to connect data and improved educational outcomes through the Program Approval process is commendable; in practice, however, the use of data throughout the process leaves much to be desired.

To probe how data are and are not used in the Program Approval process, the external evaluation team reviewed various publically available documents and interviewed NHDOE and SERESC employees during March and April of 2012. Based on a review of documents, it appears that private programs are required to undergo Program Approval (including Case Study) at least once every five years in order to maintain their accreditation. The external evaluation team could find no other criteria used for a more purposeful selection of particular facilities for Program Approval, despite the existence of statewide assessment results, suspension/expulsion data, placement data, and transition data (Indicator 13 and 14) – data collected annually by

⁴⁷ 2010-2011 Year End Summary Report, p. 4.

⁴⁸ 2010-2011 Year End Summary Report, p. 31.

⁴⁹ 2010-2011 Year End Summary Report, p. 31

NHDOE that can be linked easily to the three aforementioned areas of critical importance.

Further, within facilities participating in Program Approval, the selection of students for Case Studies does not appear to be a data-driven process. The consensus of those interviewed was that students are selected at random (although two of those interviewed were not sure or did not know how students were selected). However, multiple SERESC staff members stated that Program Approval teams try to select students who:

- have been at the facility “for a while”⁵⁰;
- have a variety of primary disabilities;
- come from a variety of sending districts; and
- represent different age ranges (if the facility serves a variety of grade levels).

Notably, the evaluation team could not locate any procedure document, guidelines, or other written description of exactly how these “random” samples are to be constituted to ensure that these four considerations are taken into account.

Additionally, the evaluation team learned that the number of students whose files are selected for review during the Case Study varies from facility to facility. While one SERESC staff member stated the sample size depends on the overall size of the facility and the number of students served, another stated “there’s nothing in cement” to guide the sample size decision. Two of those interviewed were not sure how the sample sizes are determined, and two others stated that a sample of two students per facility is typical. Reflecting on a recent Program Approval visit, one staff member added, “The number is minimal, but we got to know those kids very well.”

In the absence of procedures or guidelines describing the selection of students for Program Approval Case Studies, the evaluation team inquired further about the selection process through additional interview probes. While three of the SERESC staff members were not sure which party or parties is/are responsible for selecting students for the Case Studies, one staff member stated that SERESC is responsible for selecting students. The staff member explained that this is done to avoid burdening private school staff who are involved in other aspects of Program Approval. Two other SERESC staff members shared a third perspective: that the student selection process is completed by SERESC staff in partnership with their contact at the private facility.

In its annual Year End Reports, SERESC summarizes the results of Case Study compliance reviews in private facilities visited each year. Both the 2009–10 and the 2010–11 reports contain the following language:

⁵⁰ In some of the short-term residential facilities, SERESC staff reported that this is sometimes difficult due to the brevity of students’ placements. One SERESC staff member reported that he/she “literally went in and pulled (student files) out of the drawer that day” in a facility where students are typically placed for less than one month.

Upon review of the data collected through the NHDOE Special Education Case Study Presentations, the following two areas are in need of improvement:

- **IEP Goals Written in Measurable Terms** 44% of the IEP's that were reviewed in the private school setting through the Case Study Compliance Review lacked IEP goals that were measurable.
- **Transition Planning** 47% of the transition plans for students aged 16 and over did not meet compliance.⁵¹

These two areas are noted as needing improvement in both reports – with the exact same percentage of files in both areas (44% for measurable IEP goals and 47% for transition planning).⁵²

In addition to identifying the areas in need of improvement listed above, the Year End Reports also include specific data concerning the types and frequencies of findings made during a given year. According to the 2010-2011 report, Program Approval teams made findings in the following areas:

- Transfer of documents from resident district (1 finding, 1 program)
- Measurable Goals (2 findings, 2 programs)
- Lack of access to the General Curriculum (4 findings, 4 programs)
- Not all personnel hold appropriate certification for the position in which they function (3 findings, 3 programs)
- Lack of policies and procedures in one or more required areas (2 findings, 2 programs)
- Lack of a properly constituted IEP team (1 finding, 1 program)
- Lack of certified administrator (1 finding, 1 program)⁵³

During 2009 - 2010, Program Approval teams made the findings listed below:

- Transition planning (8 findings, 8 programs)
- Not all personnel hold appropriate certification for the position in which they function (2 findings, 2 programs)
- Re-evaluation requirements (1 finding, 1 program)
- IEP contents (4 findings, 4 programs)
- IEP implementation (4 findings, 1 program)
- Lack of Access to the General Curriculum (5 findings, 5 programs)
- Staff qualifications (6 findings, 4 programs)
- Behavioral interventions (1 finding, 1 program)

⁵¹ 2010 -2011 Year End Summary Report, p. 34

⁵² 2009-2010 Year End Summary Report, p. 32

⁵³ 2010-2011 Year End Summary Report, pp. 36-39

- Governance (3 findings, 2 programs)
- Rate setting (1 finding, 1 program)
- Measurable goals (2 findings, 2 programs)
- Program requirements (3 findings, 3 programs)
- Evaluation (1 finding, 1 program)
- Background investigations (1 finding, 1 program)
- "Individual Education Plans" (1 finding, 1 program)
- Emergency Intervention Procedures (1 finding, 1 program)
- Summary of Performance (1 finding, 1 program)
- Daily Lesson Plans (1 finding, 1 program)
- Discipline (1 finding, 1 program)

In light of these disparate data, it is unclear how SERESC determined measurable annual goals and transition planning as the two areas in need of improvement for two consecutive years. It is also unclear how SERESC calculated the percentages of IEPs that exhibited problems with measurable goals and transition planning, since the 2010–11 Year End Report does not list *any* findings in the area of transition planning and a total of just two findings concerning measurable annual goals. Further, the 2009–10 Year End Report lists eight findings in the area of transition and only two findings in the area of measurable annual goals. No explanation is available in either Year End Report to explain how these different data in the area of transition planning could result in identical percentages for two consecutive years.

Similar to Focused Monitoring, the lists of Program Approval findings of noncompliance from 2009–10 and 2010–11 are also notable for what they lack: findings that students were deprived of FAPE by virtue of any of the violations found and findings that students were not placed in the least restrictive environment in which their IEPs could be satisfactorily implemented. The latter type of finding should be of particular importance to Program Approval teams, since many of New Hampshire’s private facilities serve students with disabilities exclusively. To the extent that any student is placed in a private facility by his/her IEP team, it would seem that a careful review of the placement justification used by the student’s IEP team is highly desirable to ensure that the placement was made in accordance with IDEA requirements.

As to FAPE, similar to the point made regarding FM above, many of the findings made by the system over the last two years (as captured in the bulleted lists above) *could have been* part of a substantive FAPE finding *if* actual student performance had been considered. For example, not including services that address all the identified needs of a student can result in a significant deprivation of FAPE if the student's performance is suffering in the area of need(s) not addressed in the IEP. But those types of connections are not made in the findings above, and the samples are not originally structured in a data-based manner such that students exhibiting poor performance (academic, behavioral, or both) are purposefully included in the

samples by design.

State Performance Plan Indicators, Data-Based Monitoring, and Performance

State performance on selected SPP indicators and any data-based monitoring related to those indicators are discussed in the sub-sections below. All references to findings of noncompliance made by NHDOE related to the indicators are taken from the Indicator 15 tables in the FFY '09 and FFY '10 APR documents.⁵⁴

Indicator 1 (Graduation)

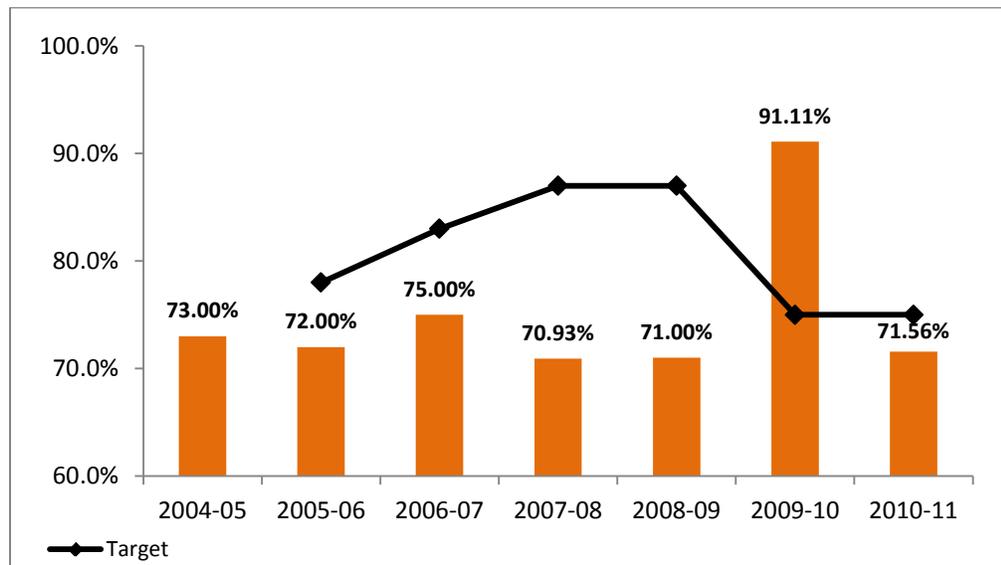
There are no improvement activities connected to monitoring in the most recent APR for this indicator, nor were any findings of noncompliance made through monitoring related to this indicator in either of the last two years.

Display II-1 shows the graduation rate over time. The data has been fairly stable over time other than the 2009-10 rate. According to the most recent APR, "Baseline was re-established because the NHDOE changed to a cohort graduation calculation rate and therefore data cannot be compared to the previous year for progress or slippage."⁵⁵

Display II-1: Indicator 1 Graduation Rate

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
1 Graduation Rate	73.00%	72.00%	75.00%	70.93%	71.00%	91.11%	71.56%

Current designated baseline year is shaded.



⁵⁴ FFY '09 APR, pp. 72-75; FFY '10 APR, pp. 94-98.

⁵⁵ FFY '10 APR, p. 6.

Indicator 2 (Drop-Out)

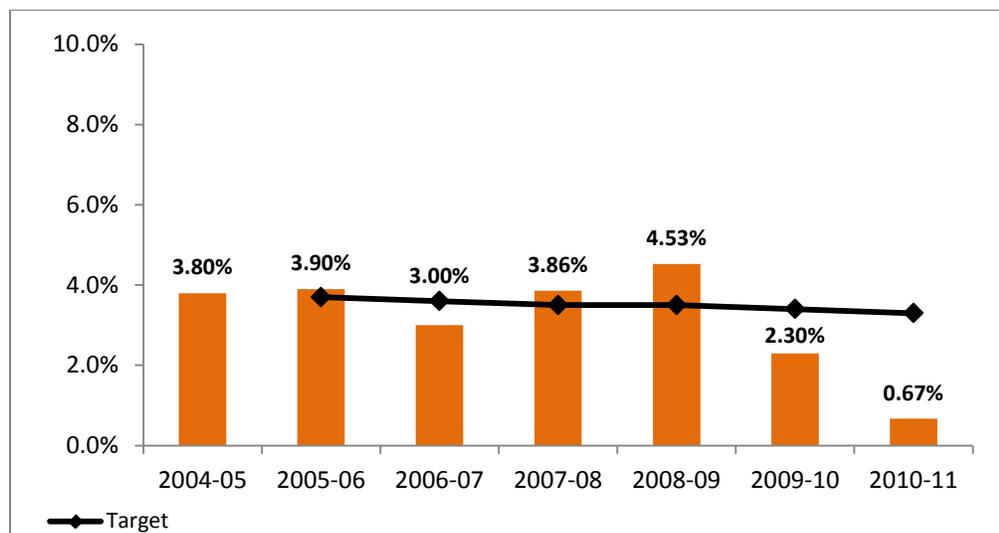
There are no improvement activities connected to monitoring in the most recent APR for this indicator, nor were any findings of noncompliance made through monitoring related to this indicator in either of the last two years.

Display II-2 shows the drop-out rate over time. The 2010-11 drop-out rate is at its lowest ever.

Display II-2: Indicator 2 Drop Out Rate

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
2 Drop Out Rate	3.80%	3.90%	3.00%	3.86%	4.53%	2.30%	0.67%

Current designated baseline year is shaded.



Indicator 3 (Statewide Assessment Participation and Performance)

As noted above, there are no improvement activities connected to monitoring in the most recent APR for this indicator. This is puzzling, as the KPI chosen to guide the FM system is the gap in performance between students with and those without disabilities. To the extent that improvements in performance by students with disabilities are expected as a result of the FM process, one would assume that FM would be regarded as an improvement activity for this indicator.

One finding of noncompliance was made related to this indicator in the FFY '09 APR, but it is not clear to which sub-part of this indicator the finding was related.

Display II-3 shows the participation and proficiency rates over time. The participation rates have increased over time. The 2010-11 participation rates are one of the highest rates since 2004-05. Participation rates are above the target.

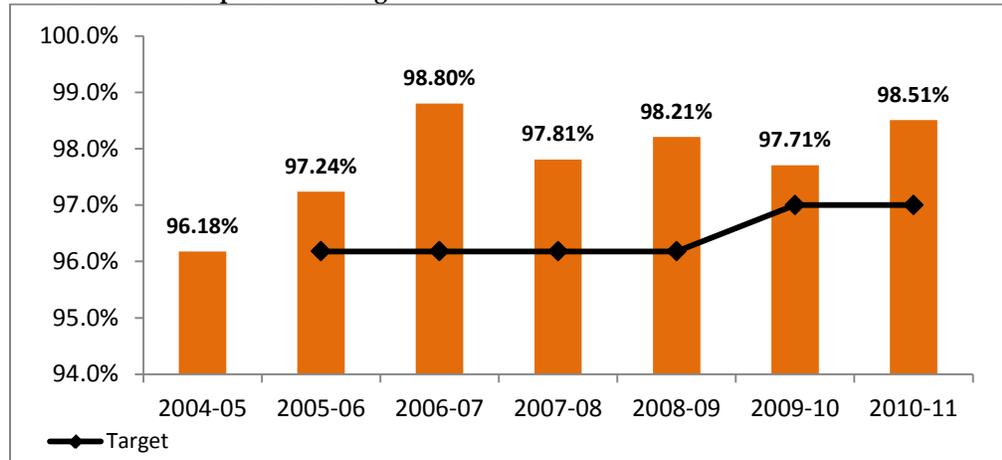
The reading proficiency rate decreased from 2004-05 to 2006-07 and then steadily increased from 2006-07 to 2009-10. The reading proficiency rate slightly decreased in 2010-11. The math proficiency rate decreased from 2004-05 to 2007-08 and then increased from 2007-08 to 2009-10. The math proficiency rate slightly decreased in 2010-11. Proficiency rates are well below the target.

Display II.3: Indicator 3 Statewide Assessment Participation and Performance

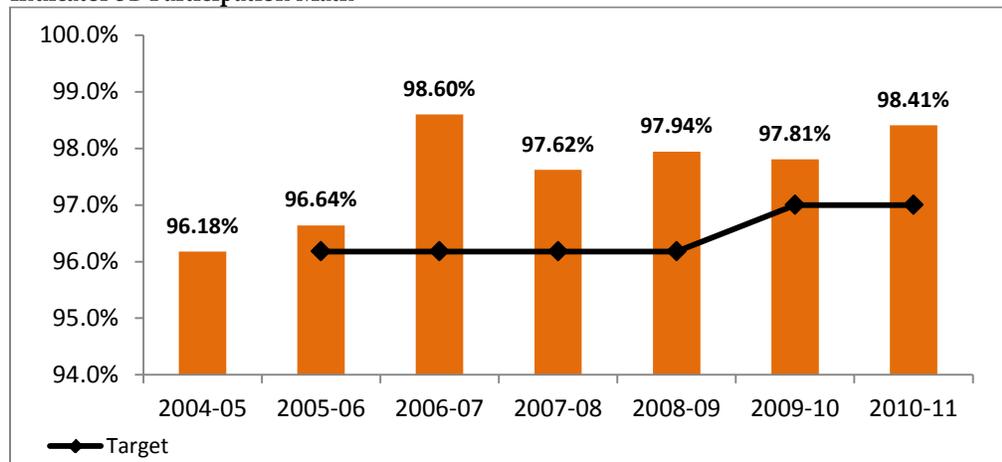
Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
3B Participation Rate Reading	96.18%	97.24%	98.80%	97.81%	98.21%	97.71%	98.51%
3B Participation Rate Math	96.18%	96.64%	98.60%	97.62%	97.94%	97.81%	98.41%
3C Proficiency Rate Reading	33.45%	41.49%	29.12%	31.88%	35.18%	38.45%	37.33%
3C Proficiency Rate Math	44.59%	31.81%	28.36%	26.93%	29.22%	33.96%	31.46%

Current designated baseline year is shaded.

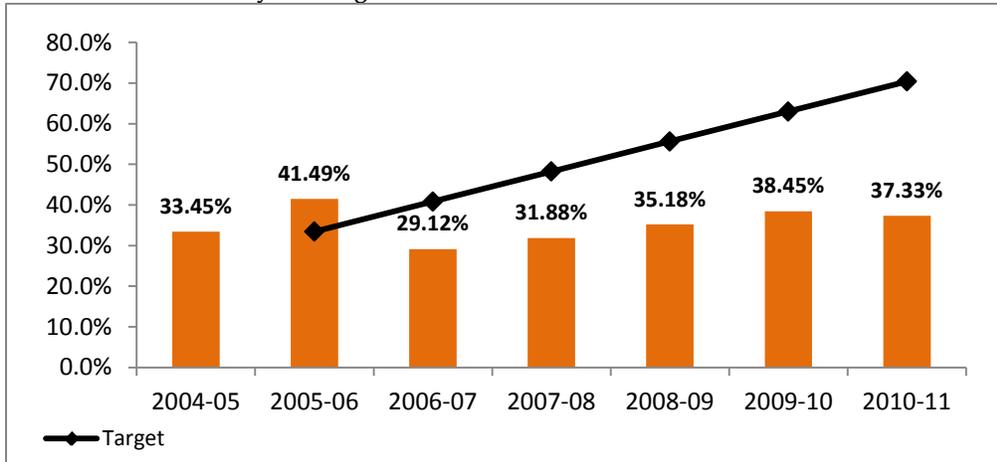
Indicator 3B Participation Reading



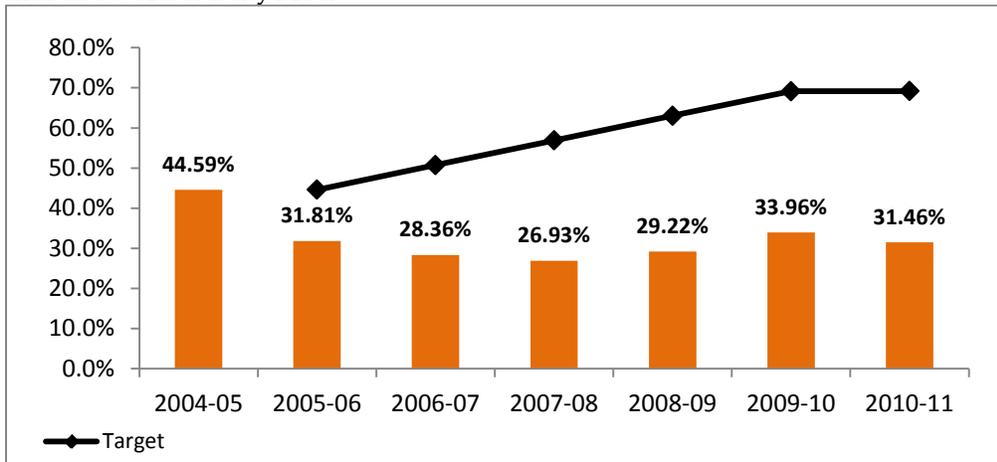
Indicator 3B Participation Math



Indicator 3C Proficiency Reading



Indicator 3C Proficiency Math



Indicator 4 (Suspension/Expulsion)

NHDOE undertakes monitoring activities related to this indicator. Although no findings of noncompliance related to this indicator are set forth in the Indicator 15 tables in the two most recent APRs (because that table tracks correction within one year), a recent finding of noncompliance was made in one district during FFY '10.

With respect to Indicator 4A, the SPP describes a review conducted in FFY 2009 in five districts that had a significant discrepancy in suspensions/expulsions for greater than ten days. Policies, procedures and practices "relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards" were reviewed for these districts via a self-assessment, and no findings of noncompliance resulted.

On-site visits were conducted for "any" district that had a significant discrepancy on Indicator 4A and 4B, but no number of such districts is set forth in the

revised SPP.⁵⁶ In addition, FFY 2010 data showed 3.45% of districts had significant discrepancies in rates of suspension/expulsion.⁵⁷ The Department explained its review process as follows:

For each of the 6 districts that the NHDOE identified as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year for children with IEPs, the NHDOE reviewed and, when appropriate, revised (or required the affected district to revise) the district's policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with IDEA. The NHDOE conducted the review required by 34 CFR §300.170(b) by permitting the districts to provide data and information to the NHDOE through a self-assessment. The district's self-assessment specifically covered a review of policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. For any district that had significant discrepancies in both 4A and 4B, the NHDOE conducted an onsite visit to review the district's policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with IDEA.⁵⁸

With respect to Indicator 4B, the NHDOE conducted on-site reviews of four districts whose FFY 2009 data showed a significant discrepancy based on racial/ethnic categories. The review was of the individual students and was

conducted to determine if there were any policies, procedures or practices that contributed to the significant discrepancy or if there was a lack of compliance with requirements relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards.

No findings of noncompliance were made in any of the cases.⁵⁹

For each of the 5 districts that the NHDOE identified as having a significant discrepancy in the rates of suspensions and expulsions of greater than 10 days in a school year for children with IEPs, the NHDOE reviewed and, if appropriate, revised (or required the affected district to revise) the district's

⁵⁶ 2011 SPP, pp. 26-27.

⁵⁷ FFY '10 APR, p. 21.

⁵⁸ FFY '10 APR, pp. 21-22.

⁵⁹ 2011 SPP, p. 28.

policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with IDEA. The NHDOE conducted the review required by 34 CFR §300.170(b) by permitting the districts to provide data and information to the NHDOE through a self-assessment.

The district's self-assessment specifically covered a review of policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. For any district that had significant discrepancies in both 4A and 4B, the NHDOE conducted an onsite visit to review the district's policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with IDEA.⁶⁰

Based on this review, the NHDOE made no findings of noncompliance in any of the five districts in FFY '09.

However, it is notable that the Department's description of the self-assessment aspect of its review process for this indicator states that *practices* are examined in addition to policies and procedures. It is unclear how the State made a determination regarding whether suspension/expulsion *practices* are compliant without carefully reviewing several pieces of district documentation, including but not limited to the following: discipline records, manifestation determinations, prior written notices, IEPs, and attendance records. It is likely that the State--rather than LEAs themselves-- would conduct a less biased, more meaningful, review of the suspension and expulsion practices in districts with significant discrepancies under Indicator 4B.

However, in FFY 2010 an on-site process was used, and one district was found to have a significant discrepancy by race/ethnicity in suspensions/expulsions *and* policies, procedures or practices that contributed to the discrepancy.⁶¹ It is unclear if the district's discrepancy was due to noncompliant policies, procedures, and/or practices. With respect to the on-site review process, NHDOE writes

For each of the 5 districts that had significant discrepancies, by race or ethnicity, in the rates of suspensions and expulsions, the NHDOE conducted an onsite visit to review the district's policies, procedures and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with IDEA. The NHDOE conducted the review required by 34 CFR §300.170(b) by permitting the districts to

⁶⁰ FFY '09 APR, pp. 21-22.

⁶¹ FFY '10 APR, p. 26.

provide data and information to the NHDOE during the onsite visit based on the *New Hampshire Department of Education Indicator 4 Self-Assessment Checklist*. Based on this review, the NHDOE identified of the 5 districts, 1 district had policies, procedures or practices that contributed to the significant discrepancy relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards. The NHDOE made a written finding of noncompliance for this district, consistent with OSEP Memorandum 09-02. The district developed a plan to revise policies, procedures and practices that contributed to the significant discrepancy, to be corrected as soon as possible but not more than one year from notification of the finding.⁶²

Eight NHDOE staff members were interviewed to gather additional information about the State's review process for Indicator 4. Five of the eight were not involved in any aspect of the Indicator 4 work, while three staff members provided comments regarding this indicator. When asked to describe the Indicator 4 policy, procedure, and practice review process used in districts, staff described a multi-step process. Staff stated that the LEA conducts a self-review of its own data and then "e-mails the checklist" to NHDOE for further review. According to the interviews, NHDOE then reportedly conducts a desk audit "a couple of years" after "pulling data" from NHSEIS, the statewide student information system.

Staff noted that five districts were identified as having significant discrepancies during the most recent desk audit. A staff member posited that "sparse population and lack of diversity tend to skew the data," resulting in an increased statistical likelihood that a discrepancy might exist.

Staff reported that the "second prong" of Indicator 4 monitoring is an on-site review of selected districts' data, policies, and procedures. Individual student files were said to be selected at random for "discussion." Technical assistance is provided during the on-site visit.

A DOE staff member also reported, "This is new to us. [It] has changed per OSEP's direction."

The Indicator B-4 checklist, referenced in the FFY '10 APR quotation above, was reviewed. The stated purpose of the document is to assist districts and NHDOE in the review and, if necessary, revision of policies, procedures, and practices related to IEP development and implementation, use of positive behavior supports, and procedural safeguards in order to ensure compliance with IDEA. The document contains two sections, a required document review and an optional "best practices" self-assessment.

The required document review includes reviewing all IEPs of students suspended for greater than ten days "to ensure they include positive behavioral supports and services needed to prevent the occurrence of behaviors that impede their learning or that of others." The document then requires a review of policies,

⁶² FFY '10 APR, p. 27.

procedures and practices related to the development and implementation of behavior intervention plans (BIPs) to ensure "appropriate steps" are taken so that the student's behaviors do not reoccur; it is unclear whether this question requires the actual review of BIPs. Next the document calls for a review of policies, procedure and practices related to manifestation determinations to ensure that students are not removed for more than ten days for behavior related to their disabilities, and then requires a review of the "general procedures" for disciplinary removals that focuses on the protection of students' IDEA rights in the procedures used by principals for disciplinary removals and in superintendents' hearings. The document then requires the review of the services provided in temporary settings to which students are removed in order to ensure that students receive their instructional services; related services, however, are not mentioned in this prompt. Finally, a review of procedural safeguards is required to ensure both positive behavioral support for students and that no removals greater than ten days occur for behavior related to disability.⁶³

The checklist and review process would be stronger if it were clear that actual BIPs of students with behavior problems were reviewed. In addition, if there are students with behavior problems who do not have BIPs or behavior goals and services associated with those goals in their IEPs, it is unclear if, and if so how, such students would be identified and reviewed in this review process.

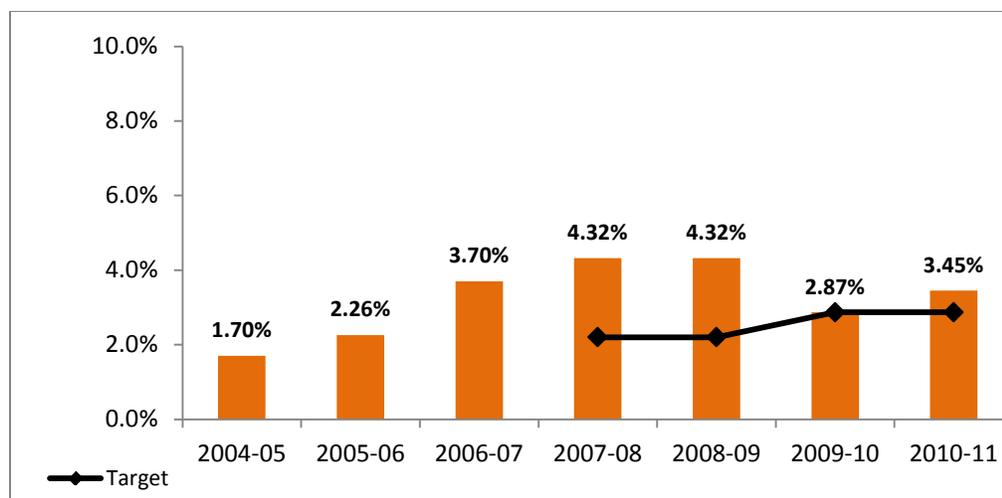
Further, limiting the review of IEPs to students who have been suspended for greater than ten days in the past is not a proactive method for ensuring that students who have been suspended for fewer days also have positive behavior supports and services in their IEPs. Moreover, the review of documents such as IEPs and BIPs will not tell us anything about the actual implementation of behavioral supports and services; in order to learn whether implementation is taking place, observations and interviews of service providers are also necessary.

Display II.4: Indicator 4 Suspension/Expulsion

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
4A Suspension/ Expulsion Rate, Overall	1.70%	2.26%	3.70%	4.32%	4.32%	2.87%	3.45%
4B Suspension/ Expulsion Rate, by Race/Ethnicity						0.00%	0.00%

Current designated baseline year is shaded.

⁶³ Indicator B-4 Review Checklist, undated, pp. 1-2.



In 2009-10, NHDOE changed the definition of significant discrepancy in order to prevent districts with small numbers of students being identified with significant discrepancy. Significant discrepancy is now defined as a suspension/expulsion rate of 3.0% or higher; a minimum n is also used. There must be at least eleven students with disabilities in the district and at least four students suspended/expelled for more than 10 days.

The evaluators believe that this new definition is reasonable with some cautions. The minimum n requirement of four in the numerator will mean that many districts potentially can have a suspension/expulsion rate higher than 3% and not be identified with significant discrepancy. For example, a district may have 50 students with disabilities, suspend three of them for more than 10 days, have a suspension/expulsion rate of 6%, but not be identified as having significant discrepancy because the district did not suspend/expel at least four students. Similarly, a district may have 20 students with disabilities, suspend three of them for more than 10 days, have a suspension/expulsion rate of 15%, but not be identified as having significant discrepancy because the district did not suspend/expel at least four students.

What this means numerically is that for any district that has fewer than 133 students with disabilities, in order to be flagged with significant discrepancy the district has to be suspending/expelling **more** than 3% of their students. Given that in 2009-10, there were 108 districts that had fewer than 133 students with disabilities, the 3% cut-score is really not in effect for these districts. Their effective cut-score is higher than the 3%.

In addition, according to DAC, states should exercise caution when using a minimum n based on the numerator, and suggest that to address reliability issues states should "consider basing their minimum cell size on the number of children with disabilities in the district" and not the number of students suspended/expelled.⁶⁴

⁶⁴Data Accountability Center, *Measuring Significant Discrepancy: An Indicator B4 Technical Assistance Guide*, March 16, 2012.

That said, the evaluators do believe that the new methodology established in FFY 2009 will produce fewer districts being identified with significant discrepancy due to a small numbers issue only.

One additional point merits mention. A document received from a NH advocacy group indicated some skepticism regarding the accuracy of suspension and expulsion data.⁶⁵ Indeed there is also concern regarding the accuracy of these data in many states, including among SEA staff. Although not discussed in the data accuracy section below, as these are very important pieces of data, states would be wise to include a data verification element of on-site processes related to Indicator 4 in order to ensure that accurate data are being reported.

Indicator 5 (Placement)

There is an improvement activity related to monitoring for this indicator in the FFY '10 APR:

The NHDOE continued to monitor and provide oversight of policies, practices and procedures of districts and nonpublic special education programs to ensure young children with IEPs have access to free appropriate public education in the least restrictive environment. Findings of noncompliance related to this indicator were identified and verified as corrected as soon as possible but no more than one year from identification.⁶⁶

There were no findings of noncompliance from monitoring related to this indicator set forth in the Indicator 15 table in either of the last two APR documents.

As Display II.5 indicates, the percentage of students with disabilities ages 6-21 who were in regular education settings for 80% of the school day or more ("regular classroom") decreased from 2005-06 to 2008-09 and then marginally increased in 2009-10 when a new baseline was established. From 2009-10 to 2010-11 the rate increased by almost 24 percentage points. A similar pattern is found with Indicator 5B which indicates the percentage of students who were in regular education settings for less than 40% of the day ("separate classroom"). Indicator 5C ("separate facilities") has steadily decreased since 2005-06.

The NH 2009-10 Indicator 5A rate of 48.71% was one of the lowest rates reported by states in FFY 2009. The mean rate across all states that year was 60.1%.⁶⁷ FFY 2010-11 data from the states has not been reviewed yet by the evaluators; however, assuming the Indicator 5A rate for most states did not change as much as it did for NH, then the NH 2010-11 rate of 72.62% would now put it as one of the

⁶⁵ Disability, Rights Center, *Summary of Concerns*, undated, pp. 2-3.

⁶⁶ FFY '10 APR, p. 31.

⁶⁷ Part B SPP/APR Indicator Analyses (FFY 2009), August 23, 2011, p.70.

highest rates. In fact, since 2005-06, the mean 5A percentage nationally has increased between one and two percentage points a year.⁶⁸

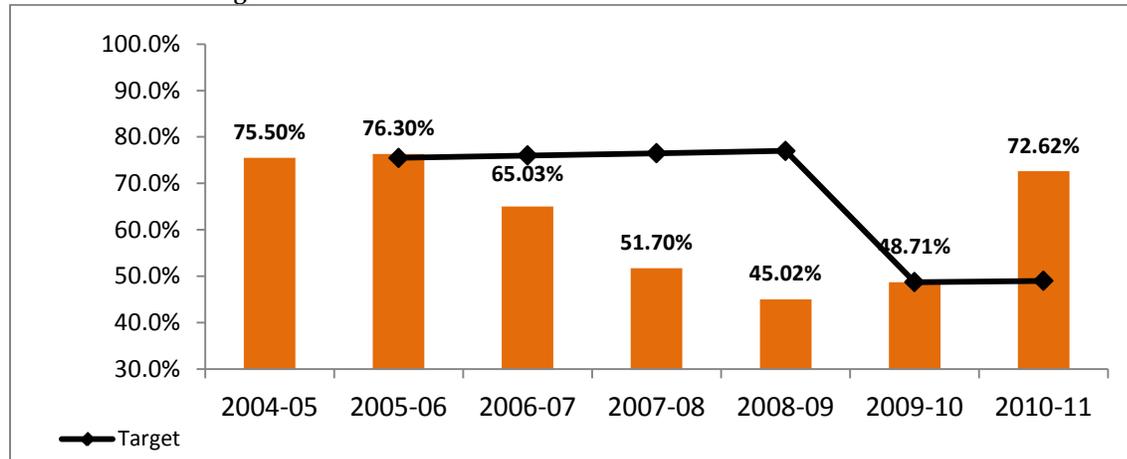
The NH 2009-10 Indicator 5B rate of 19.18% was one of the **highest** rates reported by states in FFY 2009. The mean rate across all states that year was 13.7%.⁶⁹ Assuming that the Indicator 5B rate for most states did not change as much as it did for NH, then the 2010-11 NH rate of 8.56% would put it in the bottom quartile. In fact, since 2005-06, the mean 5B percentage has decreased nationally between zero and one percentage points a year⁷⁰.

Display II.5: Indicator 5 Placement

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
5A LRE: Regular Classroom	75.50%	76.30%	65.03%	51.70%	45.02%	48.71%	72.62%
5B LRE: Separate Classroom	3.30%	3.20%	13.34%	22.62%	26.98%	19.18%	8.56%
5C LRE: Separate Facilities	4.30%	4.30%	4.00%	3.20%	3.20%	2.82%	2.67%

Current designated baseline year is shaded.

Indicator 5A LRE Regular Classroom

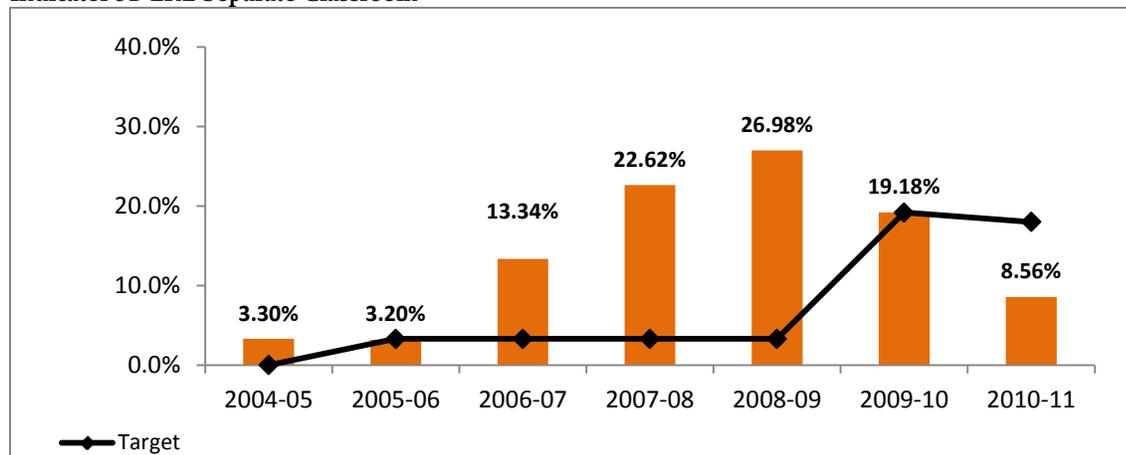


⁶⁸ Part B SPP/APR Indicator Analyses (FFY 2009), August 23, 2011, p.73.

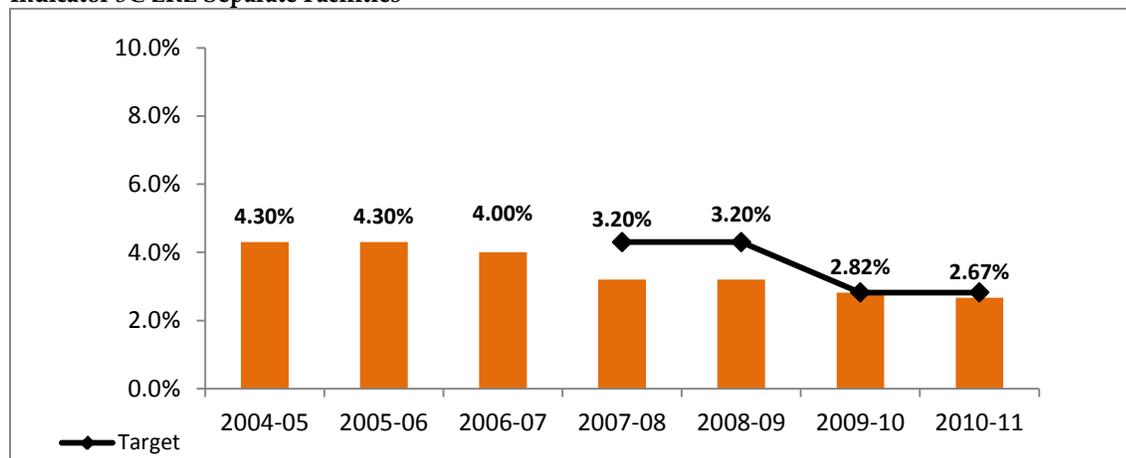
⁶⁹ Part B SPP/APR Indicator Analyses (FFY 2009), August 23, 2011, p.70.

⁷⁰ Part B SPP/APR Indicator Analyses (FFY 2009), August 23, 2011, p.76.

Indicator 5B LRE Separate Classroom



Indicator 5C LRE Separate Facilities



These data either show tremendous improvement in a one-year period, or raise questions about the accuracy of prior and/or current LRE data. The latter possibility is discussed in Section VIII. Other concerns related to compliance are discussed in this section.

In a memo to the field on reporting data for Indicator 5, NHDOE writes, "It is important for the IEP team to discuss whether a special education service or a related service is being implemented in a regular class or special education class. The setting reflects where a service is being delivered based on the decision of the IEP team."⁷¹ It is, of course, not simply important for IEP teams to have such a discussion; it is required that they do so, and that they do so in accordance with the IDEA-mandated standards for removal from general education settings. While the memo reminds IEP teams that they are to make decisions regarding removal from general education settings, in light of the 2009 data it is surprising that NHDOE did not use this memo to remind teams of the standards they are required to use in order to do so.

⁷¹ Bureau of Special Education FY'10 Memo #30-REVISED, 5/6/10, p. 2.

Indeed, the issue of LRE standards and their relation to IEP Team placement decisions does not seem entirely clear to NHDOE. In the SPP NHDOE wrote:

It is an IEP team's decision as to what setting on the continuum is appropriate for an individual child and how much time the child is in the regular classroom. Through the process of public reporting, it has become evident the targets established in 2007 for 5A and 5B are not reasonable to achieve and do not reflect national or state results. ... *We have received feedback from stakeholders that the targets originally set... are not in keeping with IEP teams decisions about where children should receive special education and related services.* This discrepancy between the actual data and the targets has been a burden for districts as they explain how and where special education and related services are provided to their local community.⁷²

In a similar vein, NHDOE wrote in the FFY '09 APR:

The continuum of learning environments available for children with disabilities needs to be reflected in the targets. It is an IEP team's decision as to what setting on the continuum is appropriate for an individual child and how much time the child is in the regular classroom. Through the process of public reporting, it has become evident the targets established in 2007 for 5A and 5B are not reasonable to achieve and do not reflect national or state results. We are also adjusting the targets for 5C since we have exceeded those targets that were set previously. *We have received feedback that the targets originally set (for example 77% of students with disabilities inside the regular classroom 80% or more of the day) are not in keeping with IEP teams decisions about where children should receive special education and related services.* This discrepancy between the actual data and the targets has been a burden for districts as they explain how and where special education and related services are provided to their local community. Therefore, in the February 1, 2011 submission of the SPP, the NHDOE is re-establishing baseline and setting new targets for 2009-2010.⁷³

Based on this reasoning, targets were revised.

However, NHDOE's reasoning here misunderstands the relation between IEP Team placement decisions and SEA general supervision of LRE compliance. It is, of course, an IEP Team's decision as to where a student should be educated. But the regulations set forth standards for IEP Teams to use in making such decisions: students should be educated with nondisabled students to the maximum extent appropriate; any removal from general education should only take place if the student's IEP cannot be satisfactorily implemented in the less restrictive setting even

⁷² 2011 SPP, p. 30; emphasis added.

⁷³ FFY '09 APR, p. 28; emphasis added.

with the use of supplementary aids and services; students should be placed as close to home as possible; etc. Individual IEP team placement decisions either comply with these standards, or do not. The purpose of SEA LRE monitoring is to find out.

But the possibility that LRE noncompliance might account for the discrepancy noted between targets and actual placement decisions is not considered in the NHDOE documents quoted above. If NHDOE were monitoring LRE compliance in a defensible manner through its FM, PA, and other processes, the Department might well have monitoring data that would allow the possibility of LRE noncompliance to be dismissed. However, as this report shows, it does not.

The evaluators are not expressing an opinion here as to what adequate SPP LRE targets should be. Rather, it is the reasoning that NHDOE used to alter its targets in light of its approach to LRE compliance monitoring that is in question. It should be noted that NHDOE is correct that their old targets exceeded national averages, and as such, were quite rigorous; however their new targets are set at levels not as ambitious as national averages. In looking at the targets set by the states in 2009-10, the median target for Indicator 5A is approximately 60.5%. The median target for Indicator 5B is approximately 11.5%. NHDOE's 2009-10 target for Indicator 5A was 48.7%; for Indicator 5B, 19.2%.⁷⁴ In addition, it is important to remember that all SEAs in the country have set improvement targets for LRE data. In other words, SEAs collectively expect improvements in the direction of less restrictive placements from the 2009 data.

Finally, there are other grounds for concern regarding the LRE data. Both sets of data, 2009 and 2010, show a large variation in placement rates among NH school districts. Considering only districts with at least 100 students with disabilities, Displays II-6 and II-7 show the percentage of districts with a given Indicator 5A percent and a given Indicator 5B percent. As can be seen in Display II-6, there were four districts in 2010-11 that had an Indicator 5A percent below 50%; in 2009-10, this number was 40. For Indicator 5B, there were 27 districts in 2010-11 that had a percent greater than 19; in 2009-10 this number was 24.

Thus, even if the 2010 data are accurate, and even if LRE noncompliance is not a major concern in many districts in the state, some districts are having much more success delivering FAPE to their students in less restrictive settings than are others. However, where a student lives should not be a factor in the restrictiveness of the student's placement⁷⁵; that should be determined through an application of the LRE standards in the statute. In addition to the requirement that SEAs do so, there are also data-based reasons that NHDOE should develop and implement a defensible LRE compliance monitoring approach.

⁷⁴ See all states' APR reports for FFY '09.

⁷⁵ For similar reasoning, see USDOE, *Eleventh Annual Report to Congress on the Implementation of The Education of the Handicapped Act* (Washington, DC: USDOE, 1989), p. 29.

Display II-6: The Number and Percent of Districts with a Given 5A Percentage Based on those districts with at least 100 students with disabilities

Range of Indicator 5A	2009-10		2010-11	
	# Districts	% Districts	# Districts	% Districts
10-19%	4	5.26%	0	0.00%
20-29%	8	10.53%	1	1.32%
30-39%	17	22.37%	1	1.32%
40-49%	11	14.47%	2	2.63%
50-59%	8	10.53%	9	11.84%
60-69%	15	19.74%	14	18.42%
70-79%	9	11.84%	31	40.79%
80-89%	1	1.32%	12	15.79%
90-99%	3	3.95%	6	7.89%

Display II-7: The Number and Percent of Districts with a Given 5B Percentage Based on those districts with at least 100 students with disabilities

Range of Indicator 5B	2009-10		2010-11	
	# Districts	% Districts	# Districts	% Districts
0-4%	4	5.26%	5	6.58%
5-9%	11	14.47%	11	14.47%
10-14%	14	18.42%	12	15.79%
15-19%	23	30.26%	21	27.63%
20-29%	13	17.11%	15	19.74%
30-39%	7	9.21%	7	9.21%
40-49%	3	3.95%	4	5.26%
50-59%	1	1.32%	1	1.32%

The weakness of the LRE component of the FM and PA processes as set forth in this report, in conjunction with the questionable reasoning regarding the relation between IEP Team decisions on placement and LRE compliance, the variation in placement patterns between NH school districts, and the huge positive changes in data in FFY '10, are a cause of concern for the evaluators. Without both an effort to ascertain the accuracy of reported LRE data along with LRE monitoring that is defensible from a compliance standpoint, there is no way to resolve these concerns within the context of this evaluation.

Indicator 7 (Preschool Skills)

There are no improvement activities connected to monitoring in the most recent APR for this indicator, nor were any findings of noncompliance made through monitoring related to this indicator in either of the last two years.

Display II-8 shows the preschool outcome scores over time. The baseline was established in 2009-10. Summary Statement 1 is defined as the percentage of students who increased their rate of growth by the time they exited, out of those students who entered the program below age expectations. Summary Statement 2 is defined as the percentage of students who exited the preschool program functioning within age expectation.

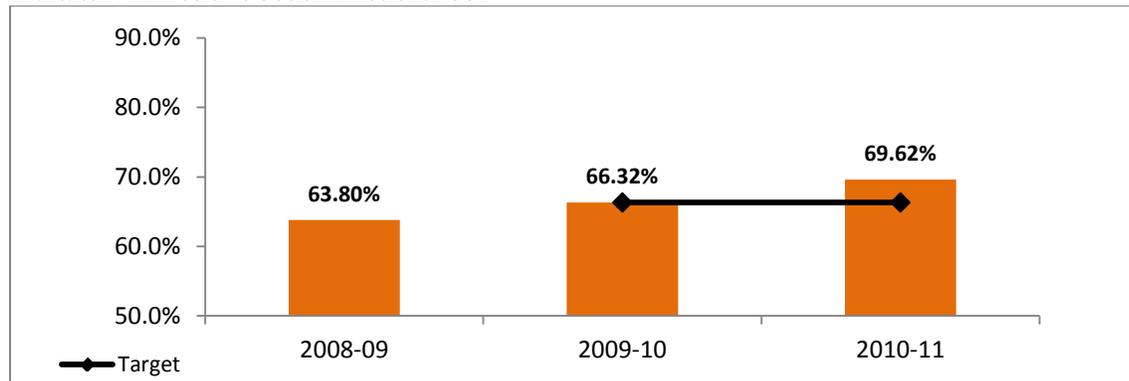
The scores on the three Summary Statement 1s increased from 2009-10 to 2010-11. However, the scores on the three Summary Statement 2s decreased from 2009-10 to 2010-11.

Display II.8: Indicator 7 Preschool Skills

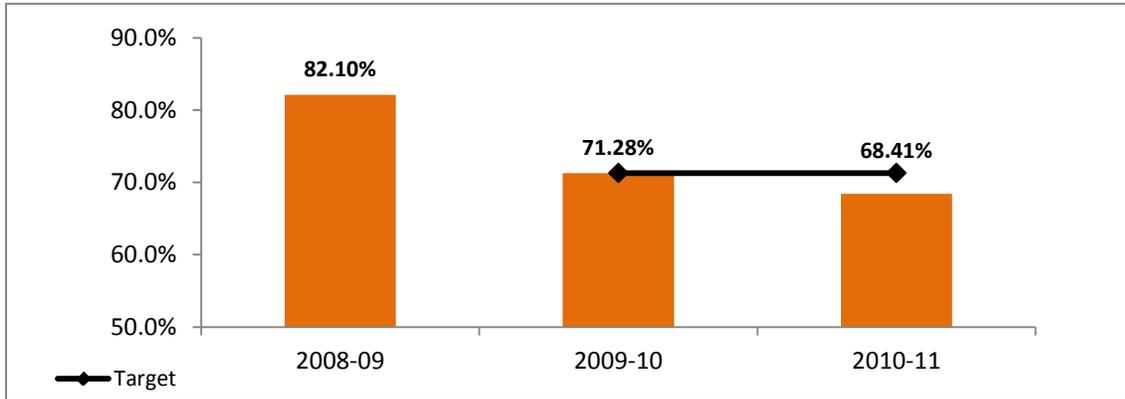
Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
7A1 Positive Social-Emotional SS1					63.80%	66.32%	69.62%
7A2 Positive Social-Emotional SS2					82.10%	71.28%	68.41%
7B1 Knowledge and Skills SS1					65.70%	67.13%	73.00%
7B2 Knowledge and Skills SS2					75.80%	53.44%	50.75%
7C1 Use of appropriate behaviors SS1					78.70%	68.52%	67.97%
7C2 Use of appropriate behaviors SS2					78.70%	63.08%	55.23%

Current designated baseline year is shaded.

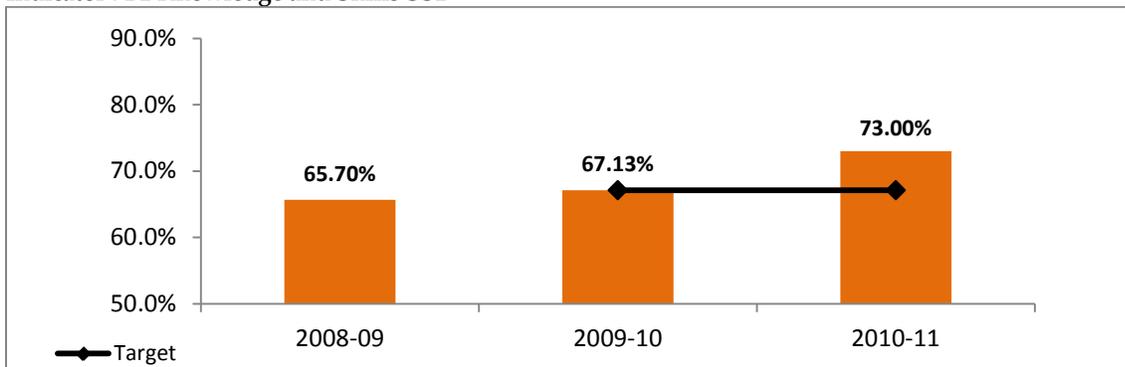
Indicator 7A1 Positive Social Emotional SS1



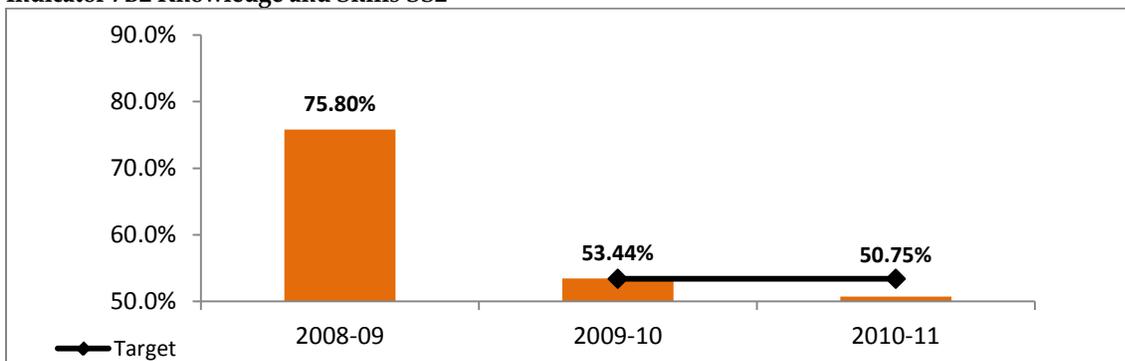
Indicator 7A2 Positive Social Emotional SS2



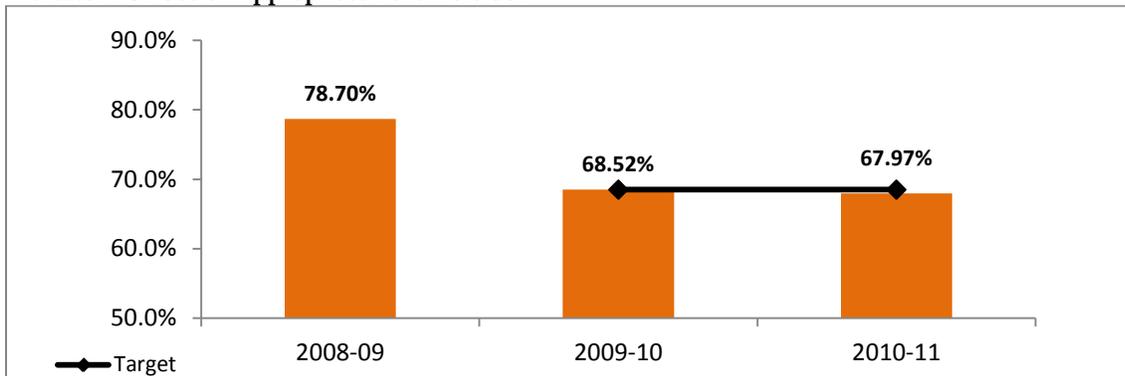
Indicator 7B1 Knowledge and Skills SS1



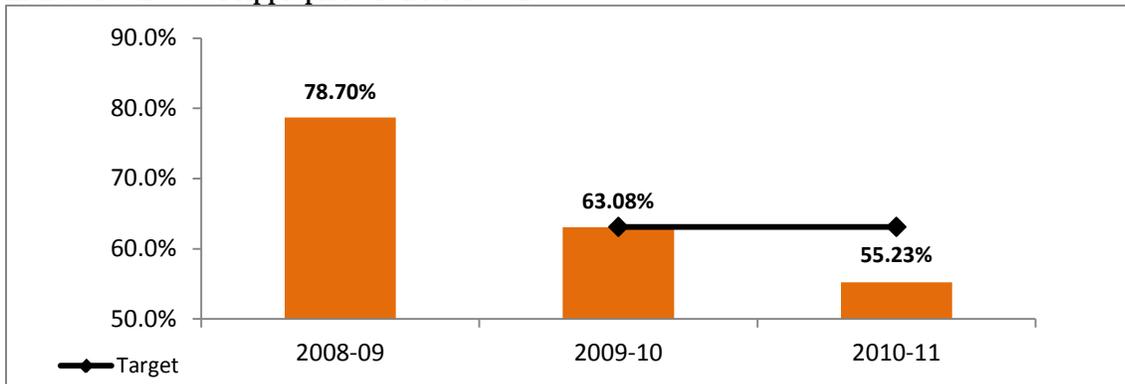
Indicator 7B2 Knowledge and Skills SS2



Indicator 7C1 Use of Appropriate Behaviors SS1



Indicator 7C2 Use of Appropriate Behaviors SS2



Indicator 8 (Parent Involvement)

There are no improvement activities connected to monitoring in the most recent APR for this indicator, nor were any findings of noncompliance made through monitoring related to this indicator in either of the last two years.

The preschool and school-age parent surveys do not include any LRE probes.⁷⁶

As Display II-9 shows, the parent involvement percentage has increased since 2007-08 when a new baseline was established. Prior to 2007-08 a different methodology was used to arrive at the parent involvement percentage. The FFY 2005 baseline was 70.5% in FFY 2005, but OSEP commented that surveys were only distributed to districts being monitored, and that this was not "a technically sound sampling plan."⁷⁷ Starting in 2007-08, the process was changed to collect data from a census of districts, and a Rasch procedure was used to arrive at the parent involvement procedure. This method was approved by OSEP. The evaluators believe this to be a sound process.

When explaining the increase in parent involvement scores, NHDOE stated,

Across the past four years of statewide survey administration there have been continued significant improvements of 18% in parent ratings on this parent involvement indicator. These positive results suggest that the improvement activities implemented by the Bureau of Special Education, the local districts and their partner organizations have had a dramatic positive effect on parent involvement and parent/ school partnerships.⁷⁸

⁷⁶ *Parent Involvement Statewide Survey Results*, pp. 8-11.

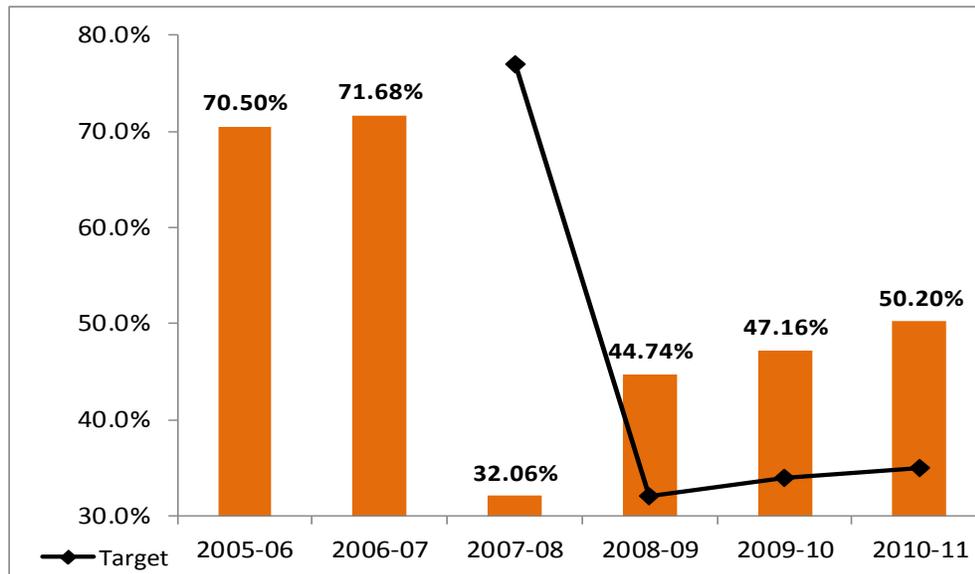
⁷⁷ OSEP FFY '05 response table, 6/15/07, p. 5.

⁷⁸ FFY '10 APR, pp. 52-53.

Display II-9: Indicator 8 Parent Involvement

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
8 Parent Involvement		70.5%	71.68%	32.06%	44.74%	47.16%	50.20%

Current designated baseline year is shaded.



The FFY '09 APR asserted, "The NHDOE analyzed the results of three years with respect to those districts who scored below the state standard."⁷⁹ The number of such districts is not mentioned.

NHDOE staff members were asked about this during interviews, and one of the eight staff interviewed responded to the question. The lone respondent was unsure of the "state standard" or the districts referred to in the APR. The staff member did, however, report that NHDOE conducted a three-year comparison of district data, broadcast an informational webinar, and assisted districts with "improvement plans." Additionally, DOE "worked with the Data Accountability Center" and contracted with the Parent Information Center to help increase parent involvement.

Although Indicator 8 performance might seem low, this is mainly due to the Rasch method that NHDOE uses to score the surveys. This method uses the "NCSEAM standard" for determining the cut score of one who meets the indicator. This is a very rigorous standard. Of the states using the NCSEAM standard in 2009-10, the average Indicator 8 score was 40.9%.⁸⁰ The NHDOE's 2009-10 score of 47.16% is higher than this national average.

⁷⁹ FFY '09 APR, p. 41.

⁸⁰ Part B SPP/APR Indicator Analyses (FFY 2009), August 23, 2011, p.80.

Indicators 9 and 10 (Disproportionate Representation in Special Education/in Specific Disability Categories)

NHDOE engages in monitoring activities related to these indicators, as discussed below. No findings of noncompliance are set forth in the two most recent APR documents.

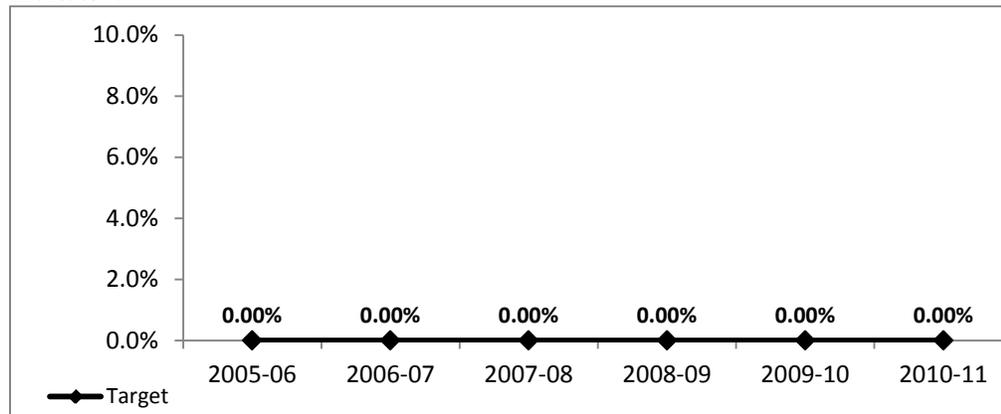
Display II-10 shows that no districts have ever been identified with disproportionate representation due to inappropriate practices, policies, and/or procedures.

Display II-10: Indicators 9 and 10 Disproportionate Representation in Special Education/in Specific Disability Categories

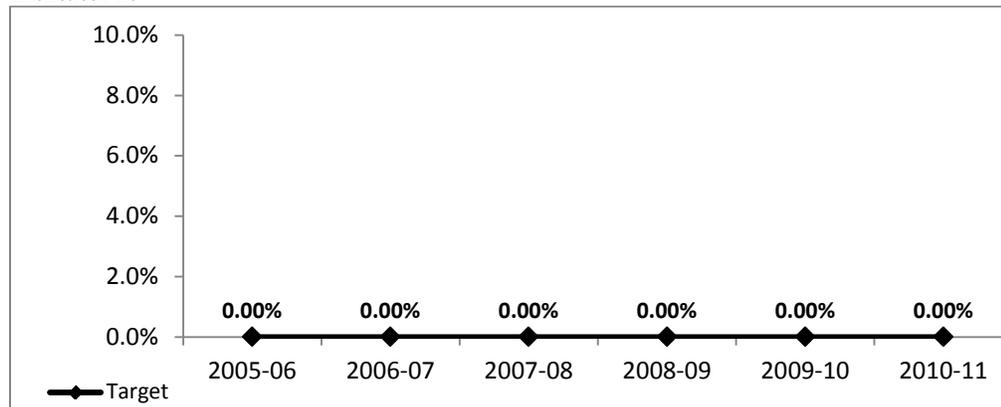
Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
9 Disproportionate. R/E, Overall		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
10 Disproportionate. R/E, Disability Category		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Current designated baseline year is shaded.

Indicator 9



Indicator 10



The description in the state's APR documents of NHDOE's data-based monitoring approach is strikingly similar for both indicators in both years. Regarding Indicator 9, NHDOE wrote in the FFY '10 APR:

The NHDOE utilized a desk audit monitoring process for the 4 districts identified in Step One to determine whether the disproportionate representation (see above definition) was the result of inappropriate identification. The NHDOE examined the 4 districts' child find, evaluation, eligibility and other related policies, procedures and practices to ensure an equitable consideration for special education and related services for all racial and ethnic groups and that eligibility determinations were conducted appropriately. For each of the 4 districts, the State consulted with the local Director of Special Education regarding the data and reviewed local policies, procedures and practices related to this indicator. In addition, the NHDOE reviewed the data for complaints and due process hearings for any issues regarding inappropriate identification that may have been found in either of these dispute resolution mechanisms.

As a result of its verification process, the NHDOE determined that, of the 14 districts that met the cell size requirement for data analysis, 4 had disproportionate representation of racial and ethnic groups in special education and related services and zero (0) districts had disproportionate representation of racial and ethnic groups in special education and related services that was the result of inappropriate identification.⁸¹

The prior year NHDOE identified three districts at Step One of the process, and also determined that none of those districts had disproportionate representation due to inappropriate identification.⁸²

Similarly, for Indicator 10 NHDOE wrote in the most recent APR:

...the NHDOE determined that, out of 174 school districts, 14 school districts met the cell size requirement for data analysis. Of those 14 school districts, 2 were identified as meeting the data threshold for disproportionate representation over and/or under representation of racial and ethnic groups in specific disability categories. Of the 2 districts, 1 had over representation of black students with Specific Learning Disabilities and 1 had an under representation of white with Other Health Impairments.

...The NHDOE utilized a desk audit monitoring process for the 2 districts identified in Step One to determine whether the disproportionate representation (see above definition) was the result of inappropriate identification. The NHDOE examined the 2 districts' child find, evaluation,

⁸¹ FFY '10 APR, pp. 55-56.

⁸² FFY '09 APR, pp. 46-47.

eligibility and other related policies, procedures and practices to ensure an equitable consideration for racial and ethnic groups in specific disability categories that is the result of inappropriate identification and that eligibility determinations were conducted appropriately. For each of the 2 districts, the State consulted with the local Director of Special Education regarding the data and reviewed local policies, procedures and practices related to this indicator. In addition, the NHDOE reviewed the data for complaints and due process hearings for any issues regarding inappropriate identification that may have been found in either of these dispute resolution mechanisms.

As a result of its verification process, the NHDOE determined that, of the 14 districts that met the cell size requirement for data analysis, 2 had disproportionate representation of racial and ethnic groups specific disability categories and zero (0) districts had disproportionate representation of racial and ethnic groups in specific disability categories due to inappropriate identification.⁸³

The prior year NHDOE identified one district at Step One of the process, and also determined that none of those districts had disproportionate representation due to inappropriate identification.⁸⁴

The APR documents do not make clear the depth of the NHDOE desk audit process regarding review of the affected district's practices. Hence, one is left with several questions. First, are the LEAs required to review specific evaluations and eligibility determinations of students who are potentially over-identified? Second, does NHDOE's desk audit include those steps? If so, does that include interviewing the relevant assessors of the students? Third, if not, how are the practices of the LEAs reviewed? Fourth, with respect to potential under-identification, are any other, or different, steps taken?

In order to answer these questions, a document designed to guide the internal NHDOE desk audit process (step 2) was reviewed⁸⁵ and NHDOE staff were interviewed. The first part of this process outlined in the instrument calls for the reviewer to prepare the district's data. The second part instructs the reviewer to contact the local special education administrator and discuss the data. Organized under that part are the following steps:

- (a) Discuss/review policies, procedures and practices related to child find, evaluation, eligibility and other related policies, procedures and practices to determine if the over/under representation was a result of inappropriate identification.
- (b) Investigate why the over/under identification may be occurring (i.e., large population of immigrant/refugees in a specific race/ethnic

⁸³ FFY '10 APR, pp. 59-60.

⁸⁴ FFY '09 APR, p. 51.

⁸⁵ Indicator 9 10 Step 2 process, undated.

- group that refuse to be evaluated, magnet for families with children from specific race/ethnicity group that also have significant disabilities, etc.).
- (c) Review child-specific information to determine if over/under identification is occurring based on a specific pattern (an individual evaluator, teacher, assessment tool) then reflect on policies and procedures.
 - (d) Determine what, if any, professional development/technical assistance needs to be provided to address any issues.
 - (e) Require, if necessary, the revision of policies, procedures and practices.
 - (f) Enforcement action, if result of inappropriate identification.⁸⁶

It is difficult to determine whether this guidance to reviewers can result in reliable findings, as it is unclear whether the reviewer is independently analyzing the local policies and procedures; whether any inputs other than the perspective of the local administrator (such as the assessors') on the local practices are elicited and considered and, if so, how; and what the "child-specific" information reviewed is, if the students' assessments themselves have not been reviewed by the NHDOE reviewer.

Finally, with respect to "practices," a pattern based on an individual evaluator or teacher is not sufficient to support a finding of inappropriate identification; in order to do so, specific problems in the assessments or eligibility determinations themselves must be found. It is unclear from the instrument whether these documents are reviewed by the NHDOE reviewers during the desk audit process.

Four of the eight NHDOE staff members interviewed responded to the queries related to these indicators. The remaining four staff members were not involved with monitoring Indicators 9 and 10 and were, therefore, unable to comment.

When asked whether districts were required to review actual evaluation reports and eligibility determinations as a component of the self-assessment process, staff responded that, if districts are found to be disproportionate, they are contacted by the Department and directed to analyze their data. According to staff, districts compare local and statewide data, sometimes analyzing "by grade level, neighborhood, etc." When asked whether the NHDOE desk audits include a review of students' evaluation reports and determinations of eligibility in addition to policies and procedures, a staff member responded, "We look at all the data [and at] all the subgroups. Cutoff points are determined by the SEA."

Therefore, there is no evidence to indicate that either the self-assessment or the desk audit process includes steps necessary to make a determination of inappropriate identification.

⁸⁶ Typographical errors in original corrected in this (a-f) quote.

Indicator 11 (Timely Initial Evaluations)

NHDOE historically had experienced challenges in ensuring compliance with the state's timeline for conducting initial evaluations and reevaluations (Indicator 11 concerns only initial evaluations). Its FFY 2002 APR "clearly identified the timeliness of evaluations as a continuing area of concern." The state pointed to "the need for an adequate number of qualified examiners and attributed the inadequacy as a reason for evaluations not meeting the State's 45-day timeline requirement."⁸⁷ The FFY '03 APR reported that 69% of initial evaluations were conducted within the timeline, and that 80% of reevaluations were timely.⁸⁸

In 2006 OSEP informed NHDOE that its FFY '06 Part B grant award would be subject to "special conditions" due to untimely initial evaluations and reevaluations, describing this as a "longstanding issue." According to OSEP, NHDOE had reported on 6/1/06 that data from 7/1/05-5/9/06 indicated that 73% of initial evaluations, and 84% of reevaluations, were timely.⁸⁹ As a result of these special conditions two progress reports to OSEP on this issue were required to be submitted in 2007. Several months later OSEP informed the state that data showed some improvement,⁹⁰ and the special conditions were ultimately removed in June of 2007.⁹¹

As can be seen in Display II-11, the timely evaluation rate increased from 2005-06 to 2006-07, but then decreased in 2007-08. However, since then, the percentage of timely evaluations has increased.

Display 11-11: Indicator 11 Timely Initial Evaluations

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
11 Timely Evaluation		81.10%	95.00%	76.84%	80.81%	94.55%	95.73%

Current designated baseline year is shaded.

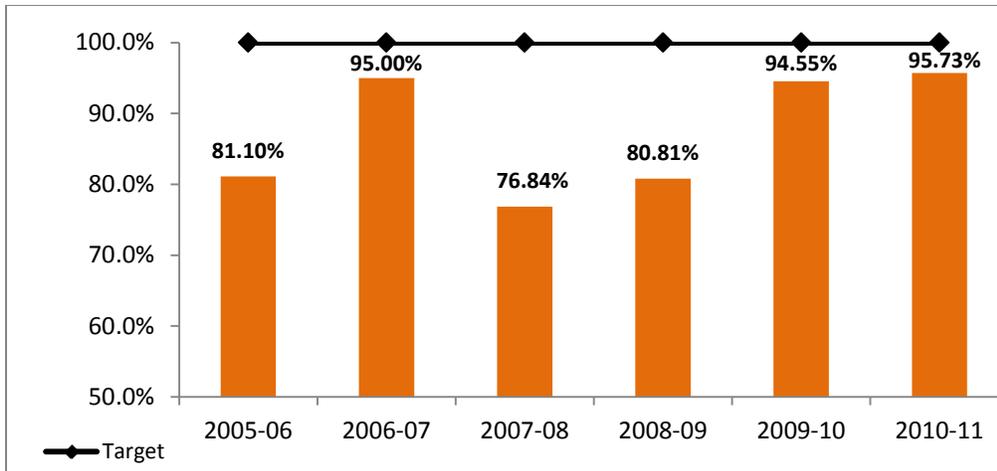
⁸⁷ OSEP FFY '02 APR letter, 11/10/04, p. 4.

⁸⁸ OSEP FFY '03 APR letter, 8/31/05, p. 9.

⁸⁹ OSEP FFY '06 grant award letter, 7/3/06, Enclosure D, p. 1.

⁹⁰ OSEP verification visit letter, 10/3/06, pp. 2, 4.

⁹¹ OSEP FFY '05 APR letter, 6/15/07, p. 2.



The FFY '09 APR shows that 81 findings of noncompliance were made related to this indicator; the FFY '10 APR shows 118 findings of noncompliance.

The methodology used to determine compliance with this indicator is explained in the most recent APR in this manner:

The NHDOE monitored each district in the state for compliance with this indicator. Data were collected for this indicator through a desk audit monitoring process. The data for this indicator were only partially available through the State database known as NHSEIS. NHSEIS does not collect written consent for time extensions or data on exceptions. Monitoring data for FY 2010 were collected on all children for whom parental consent to evaluate was received for the time period of September 1-November 30, 2010.

... For the desk audit, districts were required to submit evidence of compliance including student information regarding date of referral, date of receipt of parental consent to evaluate and date of eligibility determination for special education that was entered by the district into the New Hampshire Special Education Information System (NHSEIS). The NHDOE desk audit also required that districts with written consent for an extension had to submit written documentation of the extensions so that the NHDOE could determine of (sic) the parties has signed it by the 45th day. The NHDOE reviewed the written documentation to ensure that signatures were within the 15 day extension. These data points were then analyzed to determine state compliance percentage and district compliance percentage for completion of initial evaluations.⁹²

The process used during the prior year appears to have been substantially similar.⁹³

Three of the eight DOE staff members interviewed responded to questions

⁹² FFY '10 APR, p. 63. On three-month time period for measuring compliance with Indicator 11, see also *Bureau of Special Education FY '12 Memo #8, 12/9/11*.

⁹³ FFY '09 APR, p. 54.

related to the monitoring of this indicator. The remaining five were not involved with monitoring Indicator 11 and, therefore, deferred to their colleagues.

Staff members were asked about how the state identified Indicator 11-related noncompliance, and why a desk audit process was used rather than querying the database. Staff replied that LEAs enter assessment data into the NHSEIS database. The Department then "pulls the data from NHSEIS" in order to conduct a desk audit, with one staff noting that "there are sometimes typos." If questions arise, districts may be directed to submit supporting documents to NHD OE for further review.

Staff were also asked about the reasons for the state's use of a three-month window for gathering initial evaluation data (9/1-11/30). Responses indicated that the review of initial assessment timelines was originally a year-long process, but, in the words of one, "it took too long." The first three months of the school year were selected to provide enough time for expiration of the 45-day assessment timeline (60 days if properly extended), possible findings of noncompliance, and completion of required corrective actions, if any, all within a single school year. According to NHD OE, the Data Accountability Center has confirmed that data from September 1 through November 30 are sufficient to yield a reliable and valid evaluation of Indicator 11. DOE also reported that the three-month window was "verified by OSEP."

Additionally, when asked if they had any involvement with Indicator 11, only one of the SERESC staff members interviewed stated that he/she was involved with Indicator 11. This staff member explained that his/her role was collecting relevant data from districts, although he/she did not elaborate on which data were collected or how these data were collected by SERESC staff.

The evaluators regard the methodology for monitoring compliance with this requirement, as laid out in APR documents and through interviews, as solid. In addition, the three-month window for measuring compliance appears to be statistically sound as a sample designed to yield data that are generalizable to the year-long universe of timeliness of initial evaluations. However, that window does not allow NHD OE to measure and ensure compliance for all students who have initial evaluations during the year.

Indicator 12 (Part C to Part B Transition)

Ensuring compliance with the requirement that all children with disabilities aging up from Part C programs have IEPs in place by their third birthday had historically been problematic for NHD OE. In FFY '02 only 54.79% of such children had IEPs in place by their third birthdays.⁹⁴ The FFY '03 data indicated a small increase in compliance (57.7%).⁹⁵ As Display II-12 shows, compliance increased dramatically to 88% in 2005-06, but then decreased in 2006-07. However, since 2007-

⁹⁴ OSEP FFY '02 APR letter, 11/10/04, p. 4.

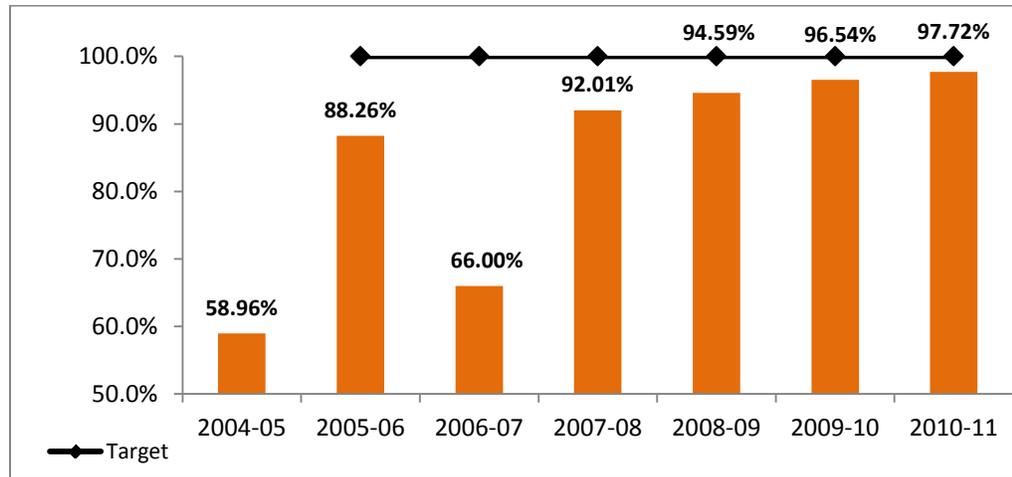
⁹⁵ OSEP FFY '03 APR letter, 8/31/05, p. 5.

08, the compliance rate has been above 90%.

Display II-12: Indicator 12 Part C to Part B Transition

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
12 Transition from Part C to Part B	58.96%	88.26%	66.00%	92.01%	94.59%	96.54%	97.72%

Current designated baseline year is shaded.



The FFY '09 APR shows that 21 findings of noncompliance were made related to this indicator; the FFY '10 APR also shows 21 findings of noncompliance.

In the most recent APR NHDOE explains its monitoring methodology:

The NHDOE collected data from each district in the state to determine compliance with this indicator. Data were collected for this indicator through a desk audit monitoring process, as the data required for this indicator were only partially available through the State database known as NHSEIS. Data were collected on all children who were served in Part C and referred to Part B for eligibility determination from the time period of July 1 – October 31, 2010.

The desk audit monitoring process referred to requires districts to submit data via an Excel workbook. The data elements allowed districts to give evidence regarding parental refusal to provide consent causing delays. NHDOE "verified data in NHSEIS," and SSECT staff did on-site reviews of "files, policies and procedures as needed."⁹⁶ The methodology described for the prior year was substantially similar.⁹⁷ The sample letter for Indicator 12 noncompliance for the 2009-10 school year, dated June 2011, was reviewed and also attributes the findings to a desk audit process.⁹⁸

⁹⁶ FFY '10 APR, pp. 69-70.

⁹⁷ FFY '09 APR, p. 60.

⁹⁸ LETTER 09-10 APR noncompliance notification, p. 1.

One of eight NHDOE staff members responded to questions on the monitoring of compliance with Indicator 12. Seven staff members deferred. The staff member reported that "the database" is used to monitor preschool transition, focusing on data from July 1 through October 31 of each year. DOE noted that different databases are used for Part B and Part C programs. Districts, in addition to entering data into the two databases, "send in a worksheet" for NHDOE review. When asked about any barriers to monitoring more than four months of data, the response was "time, timeliness, and different databases."

The evaluators regard the methodology for monitoring compliance with this requirement, as laid out in APR documents and through the interviews, as reliable. In addition, the four-month window for measuring compliance appears to be statistically sound as a sample designed to yield data that are generalizable to the year-long universe of timeliness of initial evaluations. However, that window does not allow NHDOE to measure and ensure compliance for all students who are transitioning to Part B from Part C during the year.

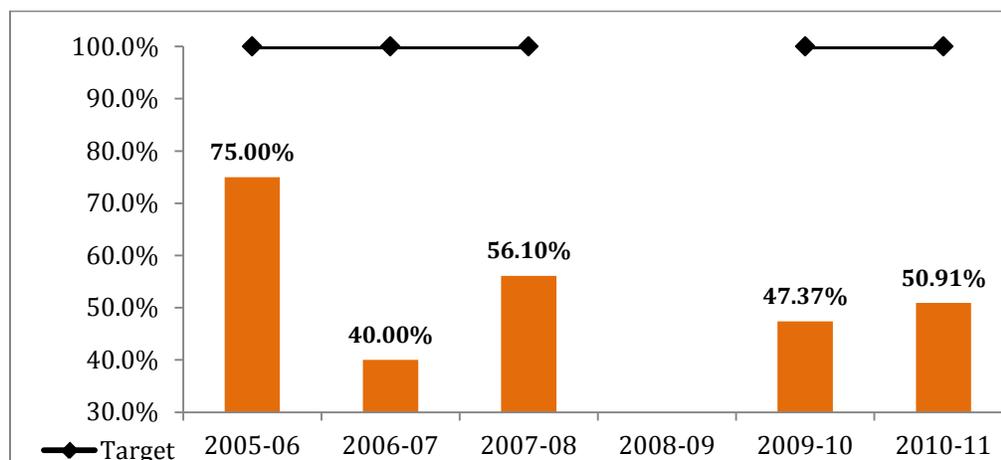
Indicator 13 (Secondary Transition)

As can be seen in Display II-13, the secondary transition rate for NH has been low. Since 2005-06, when the rate was 75%, the rate has held fairly steady at around 40-50%.

Display II-13: Indicator 13 Secondary Transition

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
13 Transition Planning on IEP by Age 16		75.00%	40.00%	56.10%		47.37%	50.91%

Current designated baseline year is shaded.



The FFY '09 APR shows that three findings of noncompliance were made related to this indicator; the FFY '10 APR shows 28 findings of noncompliance.

However, in 2009-10 the FM process reviewed only 19 files for compliance with this indicator.⁹⁹ But in 2010-11 220 files were reviewed.¹⁰⁰

In 2009-10 NHDOE used the FM system to review files for compliance with Indicator 13. Effective 2010-2011, the NHDOE will have two methods in which to monitor for Indicator 13; the Focused Monitoring process and an onsite file review in selected districts.¹⁰¹

In addition to conducting a review in the FM districts, the current *SPP* states that the on-site file review process will take place in 22 additional districts.¹⁰² According to the current APR, the 22 were selected based on not having been monitored for Indicator 13 compliance in prior years. Of these 22 school districts, two had been selected for FM; the remaining 20 were reviewed on site by NHDOE staff, technical assistant consultants, and/or other qualified reviewers. All reviewers were trained in order to ensure consistency in the reviews.¹⁰³

Going forward, beginning with the 2011-12 school year, NHDOE's intention is to discontinue use of the FM process for the purpose of Indicator 13 review, and will use the on-site review process solely. In this regard NHDOE writes, "This will ensure consistency with NH's review process, data entry and reporting processes, as well as NH school district understanding and expectations with regard to the overall process."¹⁰⁴ The evaluators agree with this reasoning.

In 2010-11, the sample letter for findings of noncompliance is based on an on-site review. The letter requires districts found noncompliant to correct the child-specific findings, and to send corrected IEPs and other supporting documentation within 60 days. In addition, the letter promises a follow-up on-site visit within a year during which randomly selected IEPs will again be reviewed.¹⁰⁵

Five of eight NHDOE staff members interviewed responded to questions related to Indicator 13 monitoring. The other three were unfamiliar with Indicator 13 monitoring and offered no comments.

Staff confirmed that, until two years ago, transition was addressed only in the FM process. NHDOE decided in 2009/2010 that transition needed "more time and priority [so it] became its own process." According to the interviewees, NHDOE selected 22 districts for a special on-site Indicator 13/Transition review in 2011/2012 and nineteen districts in 2010/2011.

Staff reported that districts are reviewed on a five-year cycle, and also stated that individual high schools, rather than districts, may be selected for future reviews because not every district serves high school students. According to staff, about

⁹⁹ 2011 *SPP*, p. 77; see also OSEP FFY '09 APR response table, 6/20/11, p. 10 where the compliance rate of 47% is described as "very low."

¹⁰⁰ *FFY '10 APR*, p. 76.

¹⁰¹ 2011 *SPP*, p. 76.

¹⁰² 2012 *SPP*, p. 76.

¹⁰³ *FFY '10 APR*, p. 76.

¹⁰⁴ *FFY '10 APR*, p. 77.

¹⁰⁵ *SAMPLE_Indicator 13 Findings 2010-2011 Letter*, p. 1.

twenty files of students aged sixteen and older are randomly selected for review. The number may vary based upon the size of the district. Staff reported that the district can sit in with NHDOE during the on-site reviews. Staff asserted that lack of time is the primary barrier to reviewing more files and more LEAs.

SERESC staff members were also interviewed concerning their involvement with transition review activities. Six of these staff members stated that they have experience with applying the Indicator 13 checklist to select files during focused monitoring visits, and three of the six indicated that they had participated in transition file reviews in other districts *not* receiving FM visits. When asked how these other districts are selected for the Indicator 13 review, four of the six SERESC staff members were unsure about the selection process, and one of the six explained that the districts are selected from the pool of districts that have not been monitored in the recent past. Finally, when asked how particular student files are selected for the Indicator 13 reviews, four of the SERESC staff members did not know how specific students were selected, but two of them replied that the files are selected at random (one stated that schools have reported back to him/her that the selection appears to be random).

Thus, Indicator 13 monitoring is not data based, since districts are not chosen based on data (such as drop-out and/or graduation rates, or post-school outcomes). In addition, students are chosen for review randomly.

Indicator 14 (Post-School Outcomes)

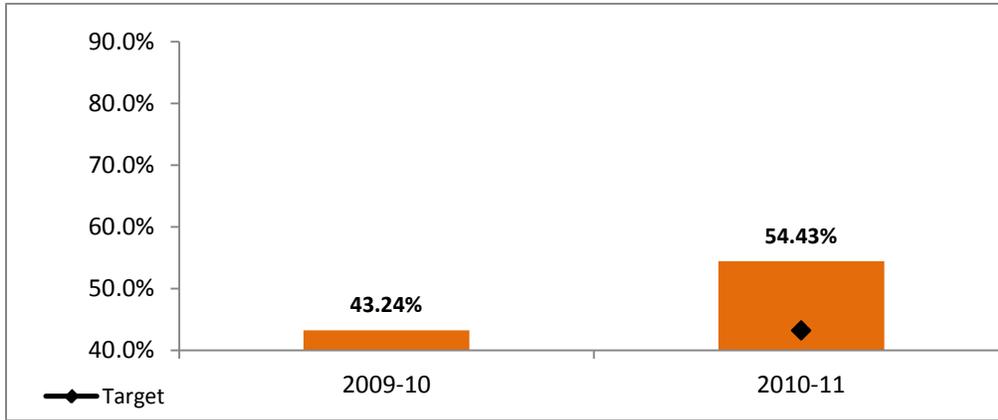
As can be seen in Display II-14, the percentage of students meeting each of the three measurements of Indicator 14 increased from 2009-10 to 2010-11.

Display II-14: Indicator 14 Post-School Outcomes

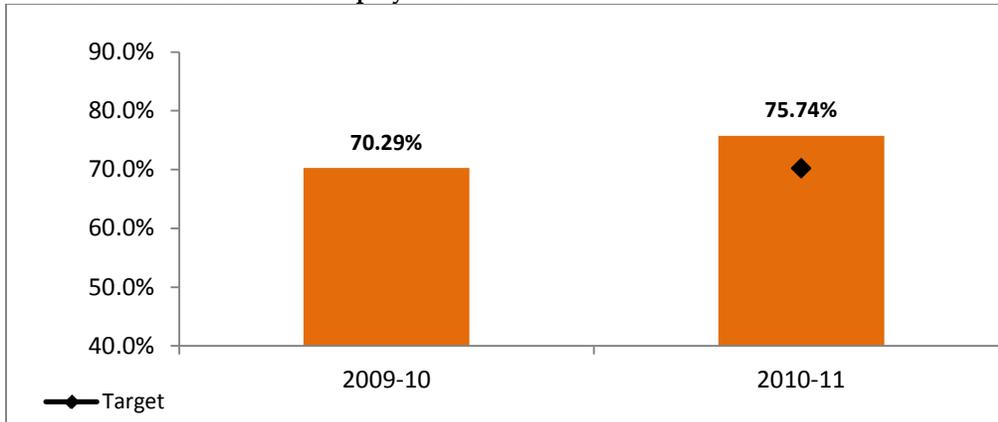
Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
14 Post-secondary Outcomes			87.00%	91.24%			
14A Measurement A						43.24%	54.43%
14B Measurement B						70.29%	75.74%
14C Measurement C						82.65%	87.87%

Current designated baseline year is shaded.

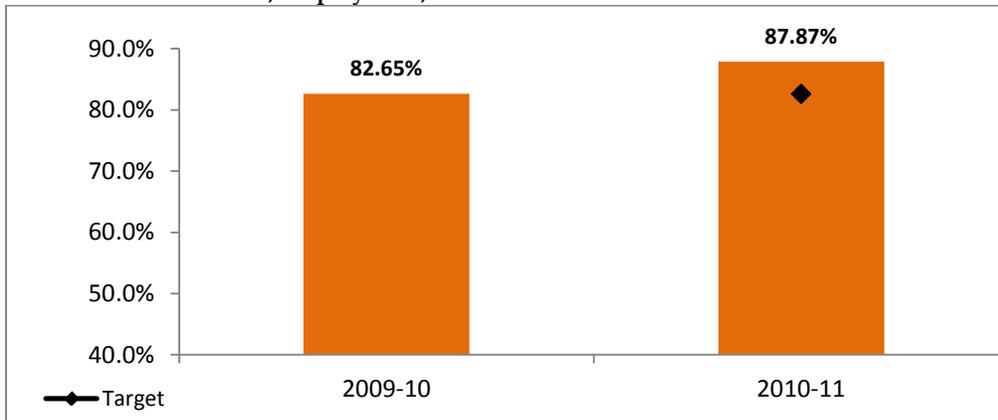
Indicator 14A Measurement A Education



Indicator 14B Education and Employment



Indicator 14C Education, Employment, and Other



Section III

To what extent are monitoring instruments and the monitoring process capable of identifying compliance/noncompliance with the program requirements? To what extent are they capable of improving student results and outcomes? Does it emphasize those requirements most closely associated with student results/outcomes? Is the system capable of making systemic findings? Is the system capable of making substantive findings?

One of the "core concepts" of FM, as expressed by SERESC, is: "Monitoring compliance of what is important and achievable for educational benefit rather than a review of 'everything' - Only priority areas of special education compliance will be monitored."¹⁰⁶ That is indeed generally accepted as a core concept of FM systems.

As shown in Section II, the FM system in NH misses obvious ways of connecting compliance with educational benefit: it fails to use purposeful samples of students, students whose performance, placement, and/or behavioral history suggest possible compliance issues, and fails to consider individual students' performance in the context of making compliance findings. In this section, we will consider the process that exists for both FM and PA, including an analysis of the instruments used by FM and PA team members to collect data concerning possible noncompliance.

Focused Monitoring Process and Instruments

Twenty-four LEAs monitored between 2007-08 and 2010-11 were surveyed by the evaluators. 86% of the 17 LEAs that responded thought the IEP review was comprehensive enough to find potential areas of noncompliance. When asked why they thought that the IEP review process was thorough enough, some examples from the comments offered were:

- "I enjoyed the process. It was a TEAM approach, looking at everything as a team, taking the time to review every single piece of the IEP. Everyone thought the process was extremely helpful!"
- "A random selection of IEPs from each school which covered students with varying disabilities and ages and meeting with the IEP Teams to review IEP development practices."

For the two districts that did not think that the IEP review process was thorough enough, one respondent offered an explanation:

- "The team spent a day in the district & reviewed a few IEP's."

¹⁰⁶ 2010-2011 Year End Summary Report, p. 19.

The large majority (88%) of respondents said that the focused monitoring process ensures compliance with IDEA program requirements "quite a bit" or "a lot." Specifically,

- 13% said "some"
- 50% said "quite a bit"
- 38% said "a lot"

As described in the *Overview of Focused Monitoring* document provided to the external evaluators by SERESC, the state's FM process contains two main components: a Study Process and a Compliance process. The Study Process, which is completed mostly internally by an Achievement Team¹⁰⁷ designated by each district, offers district staff and parents an opportunity to conduct a variety of activities aimed at answering the Essential Study Question: "What are the contributing factors to the achievement gap between students with disabilities and their non-disabled peers, and how may this gap be narrowed?"¹⁰⁸ The *Overview* sets forth the following steps as the key subcomponents of the Study Process:

Step 1 Get Ready for Inquiry (July/September)

As a first step, the team will assess its readiness to undertake a systems change process and examine the district's decision-making process. It will engage in a "Data Dialogue" to analyze the readiness data. The team will inventory its available student performance data and its current district initiatives. It will then determine what additional data it will need to gather in order to answer the essential question.

**Step 2 Organize and Analyze Data
(October/November)**

During step 2, the team will focus on determining the nature of the achievement gap between students with disabilities and their non-disabled peers, by content area and level. The team may decide to conduct perception surveys of parents, students and teachers to provide it with additional student performance data. It will **triangulate** (use multiple data sources), **aggregate** (summarize to determine patterns, connections, discrepancies), **disaggregate** (determine performance of subgroups) and **communicate** (display data) the performance data that has been gathered.

¹⁰⁷ The Achievement Team in each district is designed to be broadly representative of its educational system. The team includes district administrators, general and special educators, parent members, and at least one member who is experienced in data analysis (see *Overview of Focused Monitoring*, p. 1).

¹⁰⁸ *Overview of Focused Monitoring*, p.1

**Step 3 Investigate Factors Impacting Student Achievement
(Dec/Jan)**

Next the team will determine the root causes of underperformance and identify the significant challenges and needs of the district. It will need to seek answers to the essential question from a holistic system perspective, and examine curriculum, instruction and assessment issues that impact all students in both general and special education settings. The team will then prepare a set of findings from its data analysis. The findings will provide the foundation for its system improvement plan.

**Step 4 Determine Effective Practices and Write a Plan
(February/May)**

The team is now ready to convert district challenges/needs into priority goals for its action plan that will address the root causes of the achievement gap. The team will establish and examine a set of alternative system changes to determine their basis in research and their effectiveness. At this point in the inquiry process, the team may decide to conduct perception surveys of students, parents and teachers with regard to strategies being considered. The team will prepare a final report on the year's study which includes the action plan and an application for an implementation grant to assist the team in carrying out its action plan.

Step 5 Implement, Monitor and Evaluate (2012-2013)

Year 2 of the Focused Monitoring process will be the implementation year for the district's action plan. At the end of year 2, the team will be asked to evaluate the implementation of the action plan.¹⁰⁹

On the other hand, the major component of the FM system's Compliance portion is an IEP Review event, which takes place over the course of two to three days on site in each district. During the IEP Review, teams of reviewers¹¹⁰ participate in a structured review of randomly selected IEPs in order to determine the district's level of compliance with the requirements of the special education process. A team conducts the review of selected IEPs with assistance provided by NHDOE and/or SERESC staff. According to the *Overview* document, "Review teams should be able to conclude whether the IEP contains the required elements; if it is reasonably calculated to provide educational benefit; and whether the IEP is useful, understandable to a broad audience, and a helpful tool in understanding the child's disability, its impact,

¹⁰⁹ *Overview of Focused Monitoring*, pp. 2-3.

¹¹⁰ Each team is comprised of certain district special and general education staff, administrators, external LEA staff, often a SERESC facilitator, and sometimes an NHDOE staff member (*see Overview of Focused Monitoring*, p. 3).

and how the school will address this impact."¹¹¹ To the extent that any IEP Review results indicate a need for correction of noncompliance, those pieces of information are incorporated into the district's final Focused Monitoring report and included in the action plan.¹¹²

As noted previously, IDEA contains a vast number of required elements that must be included in each IEP. However, the statute and regulations require states to emphasize those requirements that are most closely related to improving educational outcomes and functional results for students with disabilities as they conduct monitoring activities. The following paragraphs will discuss the ways in which the specific instruments used during the IEP Review process emphasize or fail to emphasize these substantive requirements.

The Focused Monitoring IEP Review Data Collection Form

This form¹¹³ is the primary tool used by review teams to evaluate districts' compliance with IDEA Part B requirements. It is organized into a set of questions related to access, transition, behavior and educational benefit, most of which can be answered "Yes," "No," or "N/A." In assessing its ability to guide IEP Review teams toward systemic and/or substantive IDEA violations, the evaluation team noted several troubling aspects of the instrument, including the following:

- **Regulatory citations used to support items on the review sheet are not always specific.** For example, 34 CFR §300.320 is cited as the basis for a variety of IEP content issues [i.e., measurable annual goals, which is correctly cited as 34 C.F.R. §300.320(a)(3)(i)]. In addition, the form includes some approximations and misrepresentations of federal requirements.
- **Page 4, Item #3:** review teams cannot select "N/A" when asked if the student's IEP contains academic goals. Under the federal definition of special education, specially designed instruction may or may not include academic services depending upon the student's unique needs.¹¹⁴
- **Page 4, Item #7**¹¹⁵: "Are the goals and the objectives/benchmarks written in a manner that is useful to the general education teacher?" The "N/A" option is not available, although one can envision a situation in which a student's goal may not need to be "useful" to the general education teacher.
- **Page 6, Item #3:** "If the student is participating in RTI/MTSS were those data used to measure progress?" This item is confusing, as any data collected

¹¹¹ *Overview of Focused Monitoring*, p. 3

¹¹² *Overview of Focused Monitoring*, p. 3

¹¹³ The Focused Monitoring IEP Review Data Collection Form is included with this report at Appendix -

¹¹⁴ 34 C.F.R §300.39

¹¹⁵ The form notes that this item does not reflect federal or state requirements.

through RTI/MTSS would, by definition, not reflect the impact of specially designed instruction. The item does not include an "N/A" option.

- **Page 7, “Accommodations and Modifications” section:** The section asks whether the IEP contains accommodations that will enable the student "to access and progress in the general education curriculum and nonacademic /extracurricular services." It also asks if there are modifications that "enable the student to make effective progress," and asks whether the implementation of these accommodations and modifications is monitored. There is no attempt made in this section to connect the use of supplementary aids and services¹¹⁶ (which encompass accommodations and modifications) and the student’s involvement in general education *environments*. This is a key point, as the IDEA’s standard for a student’s removal from general education settings hinges upon the team’s consideration of supplementary aids and services – including accommodations and modifications.
- **Page 7, “Special Education and Related Services” section**
 - **Item #1:** Asks if the related services in the IEP "address all the child’s identified academic, developmental and functional needs." This does not match the federal definition of related services.¹¹⁷ Rather, a combination of special education, related services, and supplementary aids and services must be considered by the IEP team and according to the student’s unique educational needs, a package of services must be designed to ensure that the student’s IEP is reasonably calculated to result in educational benefit.
 - **Item #2:** Asks if the "related services specifically enable the child to make progress in the general curriculum." Again, this reflects a misunderstanding of the 'related services' definition found in the federal regulations, which states that related services are intended "to assist a child with a disability to benefit from special education."
- **Page 8, “Placement” section:** Only two items
 - **Item #1:** Simply asks the review team to select the student’s setting based on the federal reporting categories (≥80% of the day, 40-79% of the day, or ≤39% of the day).
 - **Item #2:** Asks if the IEP contains "an explanation of the extent, if any, to which the student will not participate with nondisabled peers in the regular class and other educational settings, including nonacademic settings." However, the item and section do not ask the review team to consider whether the placement was made in accordance with the federal standard found in 34 C.F.R. §300.114.
- **Page 11, Item #7:** Asks, "If the student did not make progress, were the goals/objectives/services changed to assist the student to make progress?" The item

¹¹⁶ 34 C.F.R. §300.42

¹¹⁷ 34 C.F.R §300.34

does not allow the review team to document other means of addressing the student's inadequate progress (i.e., changing placement, changing instructors, attempting a different service time, etc.).

- **Page 12, "Conclusions" section**

- **Item #1:** Asks the review team to "assess the degree to which the IEPs were designed to provide educational benefit (access to, participation and progress in the general education curriculum) in this/these area(s)." This is an approximation of the *Rowley* standard for determining whether a student is receiving FAPE. In the court's analysis, IEPs are either reasonably calculated or they are not. The "degree" to which they are reasonably calculated is an irrelevant construct, as any disconnect between the various components that ensure a reasonably calculated IEP (evaluation, present levels of performance, annual goals, services) could result in a student's denial of FAPE.

In addition to the problematic aspects of what is contained in the IEP Review Data Collection Form, three critical items appear to be missing from the instrument—items that would be hugely beneficial (if not essential) in identifying substantive noncompliance such as denial of FAPE and LRE violations.

- Despite the title of the "Special Education and Related Services" section of the form, there are no items that probe the IEP's actual special education services—the only services that are required in each and every IEP.
- Further, the review tool does not guide a review team to make any connections among the student's needs, goals, and services—a crucial analysis if the team is to determine whether or not a student's IEP is or is not reasonably calculated (and by virtue thereof, it is difficult to determine if a student is being denied FAPE).
- The review instrument does not ask the team to investigate whether the student's placement was made in accordance with the federal standard found in 34 C.F.R. §300.114. This is a major deficiency, since LRE is one of the foundational principles of IDEA. In its current form, the instrument merely asks the team to find out if an explanation exists for the student's removal from environments containing nondisabled peers.

In addition to the considerations above about the IEP Review Data Collection Form itself, observation of the IEP review process in two districts during the 2011–2012 school year raised additional concerns about the quality of the process as it pertains to identification of noncompliance. In other words, the evaluators have concerns about the tool *and* the way it is used by teams during on-site visits. These concerns about usage of the form include the following:

- **The consistency and thoroughness of IEP reviews varied** according to the facilitator’s leadership, the review team composition, and interpretation of compliance standards. Time was also a factor that limited a more comprehensive approach to the task.
 - During a particular review, the team facilitator commented that time was running short and as a result, "We’ll do what we can." No one on the team was sure how or when the form would be completed if it was not finished on time, nor was the team sure who would be responsible for completing the review.
 - At a review observed in another school district, there was not enough time to complete the extensive educational benefit portion of the review, so the team simply agreed by consensus that there was evidence of educational benefit.
 - Teams sometimes got off-topic during the early sections of the review instrument and then rush through the latter parts of the review (which are critical because they look at changes in the student's program over time, a key indicator of whether a student is receiving adequate educational benefit).
 - Despite the tight timeframe for each IEP review, one facilitator deviated from the review instrument to provoke off-task discussions about RTI and parent involvement. Although these discussions may have been helpful during an Achievement Team meeting, neither topic applied to the file being reviewed and robbed the team of 15-20 minutes.
- **Teams seldom request primary source documentation to support findings of compliance or noncompliance.** Teams often based their IEP Review responses on school staff members’ verbal comments. In each case observed, the IEP Review teams simply accepted district staff members’ responses without further verification.
- **Several other comments cast doubt upon the effectiveness of the training provided to team members** to enable them to effectively assess compliance vs. noncompliance in the IEPs reviewed. Comments include the following:
 - Regarding accommodations and modifications, one facilitator commented, "I don’t think we need to spend too much time on that."
 - Regarding service provision: "It sounds like you’re doing it – you just didn’t write it down."
 - When asked about a particular aspect of the file being reviewed, a school staff member from the district being monitored stated, "IEPs for seniors are all the same." The comment received no follow-up – verbally or by requesting additional files – from the team facilitator or any other team member.
 - During team discussions, LRE issues were avoided. External evaluators did not witness any discussion of placement justifications, even though none of the files chosen for review contained a justification for removal

that directly addressed the IDEA standard for removal from general education environments.

- During some IEP reviews observed, there was confusion among team members regarding the important differences among special education, related services, and supplementary aids and services. The review instrument exacerbated the confusion by failing to provide definitions or even descriptions of the various differences among them.
- **Several comments expressed during the various IEP reviews observed by external evaluators reflected a lack of reliability from one team to the next.** Comments include the following:
 - "Yes? No? Let's say 'no' with an asterisk."
 - In discussing whether a particular item should be scored "Yes" or "No," a team facilitator stated, "I don't even know. I'm just writing it down."
 - Another team facilitator commented, "The conversation is the important thing. Whether you get a checkmark or not, it doesn't really matter."
- **Review team members all expressed unwillingness to clearly define what constitutes compliance** or noncompliance when something is "on the fence." Further pieces of data are not requested for clarification, and team members were unclear as to who has the final say.

Out-of-District File Review Instrument

This instrument, which is applied to a sample of students placed outside of their resident districts, contains four sections: evaluation, IEP, transition, and service delivery. The document does not contain an LRE section, an omission of significant concern in an instrument applied to the files of students placed in restrictive settings. It also does not contain any questions or probes regarding the extent to which the student is making progress, how the student is performing on state assessments, or other potential measurements of educational benefit.

The first section, which is concerned with evaluation, asks five questions regarding basic compliance, but lacks any questions concerning the *comprehensiveness* of the evaluation. It also does not ask the reviewer to capture the educational needs of the student as expressed in the evaluation; therefore the document is not useful in determining the extent to which the IEP recognizes and addresses those needs—a crucial analysis in determining whether the IEP is reasonably calculated to result in educational benefit.

Second, the IEP section looks at several basic compliance issues such as:

- Whether the IEP is current;
- IEP team composition;
- Present levels of academic and functional performance;
- Participation in statewide assessments; and
- Progress reporting.

This section of the instrument does not contain key elements of a FAPE analysis, however, such as the extent to which the needs set forth in evaluations are recognized as such in the IEP, and if/how each area of need is programmed for in the IEP through goals and appropriate services (special education, related services, and supplementary aids and services). Further, the instrument does not ask the reviewer to document whether the annual goals have changed meaningfully from year to year (an indicator of the student's improving performance), the student's grades in the general curriculum, disciplinary information, attendance patterns, and/or other performance data. In short, the instrument does not guide the reviewer toward gathering additional information (through methods such as interviews with service providers or observations) to determine whether the IEP is reasonably calculated to result in nontrivial educational benefit.

Third, the transition section again measures basic compliance items but avoids opportunities to learn valuable information. For example, it asks whether there is a statement on the IEPs of high school students of how the student will earn graduation credits toward a regular diploma, but does not ask the reviewer to capture the extent to which the student is actually earning those credits. The service delivery section is potentially a very powerful tool, but does not specify the data sources relied upon to ascertain the extent of service delivery; instead, it asks the reviewer to specify which data sources were used.

The document does contain some questions related to LRE in its IEP and transition sections, but those questions do not probe a vital question: did the IEP team's placement determination comply with IDEA's LRE requirements? Instead, the following questions are posed on the instrument:

- Are there *measurable* annual goals with benchmarks or objectives that enable the student's exposure to, involvement and progress in the general curriculum, AND that specify the extent to which the student will participate with non-disabled children in regular class?
- Is there a statement about how the student will participate with other disabled and non-disabled students in extracurricular and other nonacademic activities?
- Is there evidence that LRE has been discussed and is there a plan or transition to a less restrictive environment?¹¹⁸

Each of these questions can be answered "Yes" and still the placement decision can violate, even flagrantly, the LRE requirements.

¹¹⁸ 2011-2012 *Out of District File Review* instrument, pp. 1-2.

Conclusions: Focused Monitoring

In light of the data collected and reported here in Sections II and III, the external evaluators conclude that New Hampshire's FM process is capable of identifying *some* noncompliance.¹¹⁹ However, due to serious deficiencies in the both the instruments used to collect information from files and the inconsistent, often problematic, application of those instruments by IEP review team members, the evaluators conclude that the current system is not capable of making many important substantive findings of noncompliance.

In addition to the evidence reported above, this conclusion is supported by the results of monitoring findings from FFY 2009 and FFY 2010, during which no student was found to be denied FAPE and no student was determined to be placed outside of his/her LRE. Finally, because the FM process does not emphasize those requirements most closely associated with improving student results and outcomes, the current process is unlikely to have more than an incidental impact on systemically improving results and outcomes for student with disabilities in districts and the state as a whole.

Program Approval Process and Instruments

New Hampshire's PA process is the means by which private facilities serving youth with disabilities become approved and maintain approval to operate in the state. The process involves several different facets, most of which are not closely related to IDEA but to other state and federal requirements. Facilities holding state approval must reapply at least every five years in order to continue serving students with disabilities from New Hampshire's public schools. The major components that must be in place for any private facility seeking Program Approval are as follows:

- A completed, signed Program Approval application
- Registration documentation from the New Hampshire Secretary of State
- Updated health & fire inspection forms
- Documentation of non-profit status
- A completed "Private School Self-Study"
- A school calendar showing 180 instructional days
- All special education policies and procedures¹²⁰

SERESC reports an increased volume of Program Approval requests over the past few years, and the agency received 49 requests for application materials in 2010-2011. The time SERESC devotes to the activities of "logging requests for application materials, distributing applications, providing technical assistance to the field,

¹¹⁹ See Section II of this report for a summary of the findings made through the state's Focused Monitoring process in FFY 2009 and FFY 2010.

¹²⁰ 2011-2012 *Private Program Application*, p. 2

conducting visits and writing summary reports" has thus increased.¹²¹ However, there were 62 such requests in 2009-10, and requests averaged 48-49 per year between 2007 and 2009, and 37-38 per year between 2005 and 2007.¹²²

Once a facility has received approval to operate, it must undergo periodic re-approval, and the special education case study is a part of this re-approval process. According to orientation materials provided by SERESC, the case study involves several subcomponents of its own, including the submission of the following documents prior to an on-site visit:

- A facility profile, including student demographics
- Program descriptions
- Personnel roster
- Parent surveys
- LEA surveys
- Self-study
- Policies and procedures¹²³

Judging from the list of Program Approval findings made in FFY 2009 and FFY 2010, the state makes findings of noncompliance through some of these components (i.e., findings concerning staff qualifications, inadequate policies and procedures). As such, a brief review of the forms associated with these subcomponents is provided below:

Qualified Staff

The NHDOE form titled "Required Certified Staff or Consultants" is used during the PA process to determine whether a private school or program complies with requirements pertaining to staff qualifications. The form includes a list of twenty required staff positions, as well as their respective endorsement codes, for three grade spans: Elementary, Middle School, and High School. The following examples taken from the form indicate that a certified administrator is required at any site serving elementary, middle school or high school students, while a certified reading specialist is required only at sites serving elementary students, and certified foreign language teachers are required only at sites serving high school students:

¹²¹ 2011-2011 Year End Summary Report, pp. 60-61.

¹²² 2009-2010 Year End Summary Report, p. 54.

¹²³ Case Study Compliance Review Process (PowerPoint slide #14; April 6, 2011)

<u>Required</u>	<u>Elementary</u>	<u>Middle School</u>	<u>High School</u>
Administrator 0003, 0006	XX	XX	XX
Reading Specialist 0037	XX		
World Languages 0606, 0625, 0625, 0608, 0609, 0613, 0618, 0619			XX
Special Education 1900, 1833, 1910, 1855 1907, 1844, 1909	XX	XX	XX

Attached to the two-page Required Certified Staff or Consultants form is a three-page guidance document pertaining to the roles and responsibilities of certified consultants working with private special education schools. The guidance includes the following statement:

In an attempt to assist private special education schools in meeting the certification standards for educational personnel, the NHD OE, Bureau of Special Education, has endorsed the implementation of a "consultation model" for use in the private special education school setting. In order to further define and clarify how this consultation model can be utilized, the following guidelines are provided...

The guidance document continues, in pertinent part, "If the certified teacher does not hold certification in the content area in which he/she is teaching, there must be a consultant who holds that certification working along with the teacher."

For each position required at a given school site, the Required Certified Staff or Consultants form provides space for the reviewer to mark "Yes" or "No" under columns headed "Certified Staff" or "Consultant Staff." According to SERESC personnel, one staff member may fulfill multiple requirements, such as Administrator, Elementary Education Teacher, and Special Education Teacher, at the same school site.

When the reviewer marks "Yes," to indicate the availability of qualified staff or consultant (*e.g.*, special education teacher), neither the review form nor the accompanying guidance document directs the reviewer to record the name of the qualified staff member or the staff member's qualifying endorsement (*e.g.*, Learning Disabilities, Speech/Language, Orthopedic Impairments). Additionally, the reviewer is not prompted to verify the existence of a valid professional certificate or credential

reported by the staff member or the private school.

While the possibility exists that actual review practices are accurate and thorough, the Required Certified Staff or Consultants form, on its face, is not sufficient to ensure the provision of special education and related services by appropriately certified staff members. It does not provide a means to collect all information necessary to determine staff qualifications. In addition, it does not include procedures to verify professional certificates or credentials.

Policies and Procedures

A private school providing special education services is required to have in place approximately 94 policies and procedures pertaining to the following 22 topics in order to be certified by the NHDOE, Bureau of Special Education:

- Governance
- Administration
- Program Requirements
- Responsibilities of Private Providers of Special Education or Other Non-LEA Programs in the Implementation of IEPs
- Behavioral Interventions
- Child Protection Act
- Emergency Intervention Procedures
- Use of Restrictive Behavioral Interventions
- Qualifications and Requirements for Instructional, Administrative and Support Personnel
- Certification Standards for Educational Personnel
- Employment and Volunteer Background Investigation
- Change in Policy or Termination of the Enrollment of a Child With a Disability
- Parent Access to Education Records
- Class Size
- Calendar Requirements
- Physical Facilities
- State Fire Code
- Child Care
- Health and Medical Care
- Insurance Coverage
- Photography and Audio or Audio-Visual Recording
- Emergency Planning and Preparedness

As part of the NHDOE Special Education PA Private Program Self-Study process, applicants are required to "specify the documentation that provides evidence of

compliance for each requirement" and to indicate the "document name, page number, location and persons responsible for each record along with other descriptive information."

Section 4 of the Private Programs Application Materials and Assurances packet includes a twelve-page form that contains a checklist of all required policies and procedures and designated spaces for the applicant to indicate the location of "Documentation" for each requirement. The following example is excerpted from Page 2, Section 4 of the application submitted by RSEC in 2011/2012:

Requirement: A private provider of special education or other non-LEA program shall be responsible for providing students with disabilities all services detailed in their IEPs unless the provision of those services has been agreed upon by contract with the sending LEA

Documentation: Section 8, Pgs 2-3
Section 9, Pg 7

The review document also provides a designated space associated with each listed requirement for the reviewer to indicate "C" or "NC."

The checklist alone is insufficient to ensure fulfillment of all requirements listed on the review checklist. To determine compliance, the reviewer would need to compare systematically each of the listed items to the "Documentation" identified by the applicant and conclude that statutory requirements had been met. As reported by SERESC personnel, a reviewer typically "spot checks" high-priority requirements, such as emergency planning and behavioral interventions, to determine overall compliance. Such a spot-checking practice is inadequate, especially for determining compliance with IDEA.

LEA and Parent Surveys

The application packet includes an LEA survey and a parent survey. Each sending LEA is asked to rate a series of statements including, "The school consistently follows special education rules and regulations," and "The school implements all parts of students' IEPs." Curiously, the parent survey does not include an item regarding implementation of IEPs.¹²⁴

Private Program Self-Study Form

Section 4 of the application packet is titled "Self-Study: Documentation of Compliance." It includes a thirteen-page list of required documentation pertaining to a variety of topics including, but not limited to, governance, behavioral interventions,

¹²⁴ 2011-2012 *Private Program Application*, pp. 9 - 10

and "responsibilities of private providers of special education or other non-LEA programs in the implementation of IEPs." The private school "must specify the documentation that provides evidence of compliance for each requirement."¹²⁵

SERESC staff members reported that self-study information provided by the private facility is reviewed prior to the on-site visit, and the reviewer deems each requirement compliant or noncompliant. It is unclear whether the private school is allowed to correct noncompliance prior to the report of findings and determination of appropriate corrective actions.

The Program Approval Case Study Focused Review Process

As it pertains to the evaluation questions posed in this section of the report, the key compliance activity conducted through the Program Approval process is known as the focused review part of the case study. The state's case study orientation manual describes the process in this way: "Case studies represent the essence or heart of the review process. They tell the visitors about the work being done for students with educational disabilities by the staff in the organization."¹²⁶ The document continues, stating,

For each student case selected, a team of special educators, general educators and related service providers prepares a portfolio that tells the student's educational story. The team gathers evidence to answer specific questions about the individual student and the work done by the school to support that student. The team then analyzes this evidence and prepares a student profile to provide the visiting team a snapshot of the student's educational experience.¹²⁷

In 2010–2011, the state conducted case studies of 36 students, all of who were placed at five private schools. In 2009–2010, the process was conducted for 36 students at fourteen private schools.¹²⁸ During interviews with SERESC staff members, external evaluators asked about the barriers to conducting additional case studies. Time and resources were both cited by multiple staff, while another added, "We couldn't burden [private facilities] with doing more case studies than we already do." External evaluators observed case studies at six private facilities during the spring of 2012. In four of the sites, case study review teams conducted focused reviews on behalf of two students at each facility. At the two other facilities in which external evaluators made observations, one case study focused review was conducted in both programs.

¹²⁵ 2011-2012 *Private Program Self-Study*, p. 1

¹²⁶ 2010 *Visitor Orientation Manual, Case Study Compliance Review*, p. 2.

¹²⁷ 2010 *Visitor Orientation Manual, Case Study Compliance Review*, p. 2.

¹²⁸ 2010-2011 *Year End Summary Report*, p. 31; 2009-2010 *Year End Summary Report*, p. 29.

SERESC's Year-End Reports emphasize that ensuring compliance among private school facilities is a major focus of the case study process, and three areas of critical importance are addressed through every case study: access to the general curriculum, transition, and behavior strategies and discipline. During interviews with SERESC staff, external evaluators asked how and why those particular focus areas were selected. Most staff members were not sure how or why these focus areas were put in place, but one commented that they were put in place by NHDOE based on guidance from the USDOE. Another staff member stated that these areas were selected based on common findings of noncompliance from previous visits.

Although it seems that LRE would be an important focus of the case study process (since all of the students whose files are reviewed are placed out-of-district in private facilities), this area is not addressed directly through the process. When asked about this during interviews, SERESC staff members provided a variety of opinions on the subject. Three of those interviewed suggested that LRE was somehow "embedded" in other areas of the case study such as access to the general curriculum. One of those three staff members later remarked, "Maybe we could ask more questions about that," although he/she expressed unwillingness to "second guess" IEP teams. The latter comment is especially problematic, since conducting appropriate monitoring activities *must* involve second guessing IEP team decisions if those decisions do not appear to have been made in accordance with IDEA requirements.

Case Study Data Collection Forms

The data collection forms are divided into four sections addressing student profile, access to the curriculum, transition planning, and behavior. Private facility teams are instructed to partially complete the form¹²⁹ for each student selected for a focused review before they are presented to the visiting review team. Based upon the private school's prepared declarations and any additional information provided during the on-site focused review, the visiting team responds to the prompts and completes the form.

Program Approval/Case Study reviews involve the use of Case Study Data Collection Forms, which vary slightly depending upon the grade levels served by the private school being reviewed (Preschool, Elementary, Middle/High School). Examples cited here are specific to the Middle/High School version of the form.

The Case Study Data Collection Form is divided into four parts:

- Student Profile
- Section 1: Access to the General Curriculum
- Section 2: Transition

¹²⁹ The LEA completes all of the student profile section. For each of the remaining areas of review, the LEA lists "Evidence/Data" in response to various prompts.

- Section 3: Behavior Strategies and Discipline

In contrast with the Focused Monitoring IEP Review Data Collection Form, the Case Study Data Collection Form does not include a section dedicated to a longitudinal study of educational benefit. Instead, the Case Study form relies upon the "[selection of] one IEP goal and [graphic] display [of] measurement of progress over a 3-year period."

Student Profile

The Data Collection Form includes the following instructions to be addressed by the private school prior to the Program Approval/Case Study on-site visit:

Student Profile Instructions:

Please provide an overview of the student's educational background. Include information that will provide the case study audience with a snapshot of the student's educational disability(ies) as well as information on progress regarding academic achievement and previous placements.

IEP Progress Instructions:

In addition to the student profile, select one IEP goal and graphically display measurement of progress over a 3-year period.

Student profile information is provided to the visiting review team at the time of an on-site Case Study presentation. The presentation also includes a discussion of student progress toward one selected IEP goal. The presentation, which lasts approximately 45 minutes, may include a PowerPoint slide show with comments from the student, the student's parent, a program administrator and various service providers.

Section 1: Access to the General Curriculum

The first part of Section 1 includes a series of questions and prompts with space for the private school to provide "Data/Evidence" prior to the on-site visit. The following examples are taken from the Data Collection Form used during the review of an RSEC facility in March 2012:

#3: Provide examples from this student's current IEP of academic and functional goals that are written in measurable terms.

Data/Evidence: Given a small therapeutic environment, [the student] will improve [the student's] ability to regulate [the student's] emotions by reducing [the student's] in and out of school suspensions to zero by [date]. This will be

measured by SWIS data.

#11: Was the student's most recent individual evaluation (initial or reevaluation), including a written summary report and meeting, held within 45 days of parental permission to test? If not, why?

Data/Evidence: Yes. [The student] had an...Evaluation on [date], which was requested on [date]. A Team meeting to review the evaluation is being scheduled for the first week in [the month following the on-site review].

The second part of Section 1 includes a series of "Statements" with space for the review team to respond, "Yes," "No," or "NA." The statements generally coincide with the prompts contained in the first part of Section 1. The review team bases their responses to the statements upon the data/evidence prepared by the private school prior to the visit, on-site discussions between visiting team members and private school representatives, and review of any supporting documentation provided at the time of the on-site visit.

The following examples are taken from the same Data Collection Form cited earlier:

All IEP goals are written in measurable terms Yes No NA

Was the student's most recent individual evaluation (initial or reevaluation), including a written summary report and meeting, held within 45 days of parental permission to test? If not, was it due to: (check all that apply)...Yes No NA

Student has made progress over the past three years in IEP goals. Goal 1...Goal 2
Yes No NA

Section 1 does not include prompts or "Statements" regarding service delivery. Review team members are not provided an avenue to establish whether special education and related services delineated in the student's IEP have actually been provided. In addition, the form asks if the student has made progress, but otherwise fails to analyze whether the student's IEP is reasonably calculated to result in educational benefit.

Section 2: Transition

As with Section 1 of the Data Collection Form, Section 2 includes a series of questions and prompts with space for the private school to provide "Data/Evidence" prior to the on-site visit. The following examples are taken from the Data Collection Form cited earlier:

#5: Outside Agencies...Are agencies outside of the school involved in transition planning/services? If so, which ones?

Data/Evidence: Yes. [Names of two agencies; one private and one public]

#9.b: Has the student attended IEP meetings? If not, describe the steps taken to ensure that the student's preferences and interests were considered in the development of the IEP.

Data/Evidence: Yes, [the student] attended [the student's] recent IEP progress meeting. In the past school year due to illness, [the student] was not in attendance for the scheduled [date] IEP meeting. The meeting was rescheduled and [the student] attended on [date].

The second part of Section 2 contains "Statements" to be considered by the review team which mirror prompts contained in the first part of Section 2, such as:

#8: If appropriate, is there evidence that a representative of any participating agency was invited to the IEP Team meeting with the prior consent of the parent or student who has reached the age of majority?

#7: Is there evidence that the student was invited to the IEP Team meeting where transition services were discussed?

As with Section 1, the review team's responses to the "Statements" in Section 2 are based upon "data/evidence" prepared prior to the on-site visit, discussions held during the visit, and any additional information or documentation requested by the review team.

Section 2 of the Data Collection Form addresses transition "from grade to grade and school to school," but does not address transition back to the student's home district. The form does not provide prompts or "Statements" to help the review team establish whether the IEP team systematically considers and works toward placement in a less restrictive environment.

Section 3: Behavior Strategies and Discipline

The first part of Section 3 includes a series of questions and prompts similar to those contained in other sections of the Data Collection Form. The following examples are taken from Section 3 of the Data Collection Form cited earlier:

#4.b: If this student has a behavior plan in place, does it describe these interventions, strategies and supports?

Data/Evidence: [The student] is not in need of a behavior plan separate from the established school Behavior Management Plan. See Case Study Binder.

#8.a: Does a school-wide behavioral intervention model exist?

Data/Evidence: See [name of school] Handbook, pages 16-19.

The second part of Section 3 contains "Statements" to be considered by the review team which mirror prompts contained in the first part of Section 3, such as:

A behavior intervention plan has been written to address behaviors. Yes No NA

A school-wide behavior intervention model exists. Yes No NA

As with Sections 1 and 2, the review team's responses to the "Statements" in Section 3 are based upon "data/evidence" prepared prior to the on-site visit, discussions held during the visit, and any corroborating documentation requested by the review team.

Section 3 of the Data Collection Form fails to emphasize the need for functional analysis assessments and individualized behavioral interventions as part of the IEP process. The form instead focuses upon school-wide discipline procedures.

The Data Collection Form raises several concerns, in that it:

- Inexplicably fails to ask if a student's IEP has been implemented. Nowhere does it ask for documentation of service delivery,
- Does not include a systematic set of probes designed to determine whether a student's IEP is reasonably calculated to result in educational benefit,
- Does not adequately address ongoing consideration of placement in the LRE, and
- Fails to emphasize the need for individualized behavioral assessments and interventions as part of a student's IEP.

Case Study Observations

In the spring of 2012, external evaluators observed six program approval site visits, which included ten focused review case studies. Appended to this section the evaluation team has included pertinent details from observations of three case studies, which illustrate the limitations of not only the review instruments but the effectiveness of the overall process in appropriately probing and identifying

noncompliance when it is clearly evident and/or strongly suggested by file information, comments from facility staff and service providers, and/or comments from students themselves. Due to the wide-ranging nature of the noncompliant practices observed, the results of the observations are presented in this unabridged manner in order to illustrate their diversity and gravity.

Conclusions: Program Approval

In light of the data collected over the past several months and reported here in Sections II and III, the external evaluators have concluded that New Hampshire's Program Approval process is capable of identifying *some* noncompliance.¹³⁰ However, due to serious deficiencies in the both the instruments used to collect information from files and the inconsistent, often problematic, application of those instruments by case study team members, the evaluators conclude that the current system is not capable of making many important substantive findings of noncompliance.

In addition to the evidence reported above, this conclusion is supported by the results of Program Approval findings of noncompliance from FFY 2009 and FFY 2010, during which no student was found to have been denied FAPE, and no student was determined to be placed outside of his/her least restrictive environment. Finally, because the PA process does not emphasize those requirements most closely associated with improving student results and outcomes, the current process is unlikely to have more than an incidental impact on systemically improving results and outcomes in private facilities, their resident districts, and the state as a whole.

¹³⁰ See Section II of this report for a summary of the findings made through the state's Program Approval process in FFY 2009 and FFY 2010.

Appendix to Section III: Evaluators' Observation Notes

Case Study #1 (SPEDIS ID#XXXX180)

- Secondary student with an Emotional Disability
- Placed in the private facility by court order
- Academic skills are strong, but social skills are low (student often displays aggression, defiant behaviors, and inappropriate attention-seeking behavior)
- Current IEP
 - Contains three annual goals
 - "...demonstrate age appropriate interactions with peers and adults in 80% of the observable incidents..." (baseline appears to be 75%)
 - "...increase [his/her] organizational skills so that [he/she] may have the materials [he/she] needs in 95% of her classes." (baseline appears to be 40%)
 - "...complete 90% of [his/her] class work and homework..." (baseline appears to be 20%)
 - Postsecondary transition
 - Student's postsecondary plans: to "master in animal science" with a focus on bird banding and studying migratory patterns; student reported, "I've had this all planned out since kindergarten."
 - However, postsecondary goals on the IEP could apply to almost any student:
 - Instruction "Post School Goal": "[Student name] will complete high school and enter a post secondary institution which will provide the training [he/she] needs to enter [his/her] chosen career field."
 - Community Experience "Post School Goal": "[Student name] will develop a bank of meaningful, rewarding community activities that [he/she] can participate in during [his/her] leisure time."
 - Development of Employment and Post-School Adult Living "Post School Goal": "[Student Name] will be gainfully employed as an adult."
 - Acquisition of Daily Living Skills and Functional Vocational Evaluation "Post School Goal": "[Student name] will develop a hygiene routine and learn basic household chores so that [he/she] may function independently in [his/her] adult life."
 - Services
 - Counseling 1x/week for 60 minutes per session
 - Recreation Therapy

- Listed on the IEP, but no frequency, duration, or location are specified (all of these are marked as “N/A”)
 - When asked about this, the Director responded, “We just don’t offer recreational therapy during the school months.”
 - “Academic Support” 3x/week for 60 minutes per session
 - This service was described in the case study presentation given by school staff
 - Involves 1:1 academic counseling, study skills training and tutoring, and access to educational resources
 - “Therapeutic Groups” 3x/week for 60 minutes per session
 - “Family Support” 3x/month for 60 minutes per session
 - Two in-home visits by school staff
 - One on-campus visit by parent
- Other services not included in IEP
 - “Modified instruction” by General Education teacher for 26 hours per week
 - Homework help during after-school study time, help from paraeducators during the day, and homework supports given during 2nd shift (evening residential time)
- Other apparent procedural problems not discussed or probed
 - No indication that parents were provided with a copy of the *Procedural Safeguards and Statute of Limitations*
 - IEP does not contain a list of participants – cannot determine whether the team was properly constituted
 - Director: “On the intake IEP, it was just [staff member name], Mom, and myself.”
 - Not sure if these participants could reasonably comprise a properly constituted IEP team
 - IEP states the student will participate in the statewide assessment “with modifications” – however, the IEP does not specify which accommodations have been designated for this student
 - IEP *does* include a list of instructional accommodations, but the frequency, duration, and location of each of them is not specified
- Evidence of progress in the general curriculum
 - Gains in all academic areas except mathematics: performance dropped from 2nd quarter to 3rd quarter
 - Drop in math performance attributed to inadequate class participation
 - Not working appropriately with partner
 - Not asking questions
 - Student does not participate in Social Studies class because he/she gets some “hygiene services” during that time – these services are not designated in the IEP
- Evidence of IEP goal progress

- Some difficulty ascertaining adequacy of progress due to the facility's progress reporting codes
 - On the first two goals, the progress reporting key states that a score of '4' represents satisfactory progress – student's progress was rated as a '3' on both goals during the most recent progress reporting period
 - On the third goal, the progress reporting key states that a score of '3' represents satisfactory progress – student's progress was rated as a '3' on this goal during the most recent progress reporting period
 - SERESC staff member stated, "I'm not seeing evidence that she's making progress."
 - Director: "[He/she] is regressing so badly" in the area of behavior
 - No evidence of the IEP team reconvening or amending the student's program in response to his/her lack of adequate progress
- Student's self-reported daily behavior score peaked just above '3' and has declined steadily ever since
 - Averaged about '1.8' in March
 - Facility staff report that a '5' is an average score
- **Evaluator's Impressions and Observations of this Case Study**
 - **Services being provided to the student (pursuant to his/her IEP) are not individualized**
 - **IEP services are a reflection of the "program" that is in place at the facility and are not individualized to the student's unique needs**
 - **Student's transition plan is generic and does not appear to be based on any specific information gathered through age-appropriate transition assessments**
 - **Student clearly articulated his/her post-school plans, yet the program offers no specifics in terms of employment, education/training, or independent living**
 - **Student does not have access to the entire general education curriculum due to the provision of "hygiene services" during Social Studies class**
 - **Student is not making adequate progress on two of his/her IEP goals and may be making inadequate progress in his/her math class – no response from the IEP team**
 - **Multiple procedural problems (see above)**

Case Study Data Collection Form for Student #1 (SPEDIS ID#XXXX180)

- Initial facts to keep in mind

- This sheet is filled out by school staff *prior to* the Program Approval visit; Program Approval team (which is lead by SERESC staff) reviews the school's results and asks questions for clarification.
- The school's responses in this case do not appear to reflect the individual student who was the focus of the case study; the school's responses are generic and appear to apply to any/all students with IEPs served at the facility
- The notes below are meant to highlight problematic aspects of this component of the program approval process as it played out in relation to this particular student
- Section 1: Access to the General Curriculum
 - Minimal discussion of this section of the data collection form during the on-site visit
 - No questions from the team about the fact that the school's response only discusses two IEP goals (the student has three)
 - No questions from the team when the school's response to Item #4 (which asks about the student's progress on IEP goals) only includes data to show the student's completion of assignments in her English class over the first three quarters of the school year – despite the student's well-established lack of adequate progress that was discussed earlier in the visit
 - Item #8 asks about the accommodations that are provided to the student for statewide assessment
 - School's response lists three testing accommodations
 - IEP does not list *any*
 - Not mentioned or questioned by SERESC staff
 - "Access to the General Curriculum Statements" section
 - One item asks, "Student has access to the general curriculum (as outlined by the district, sending district, or NH frameworks)"
 - Team is unsure how to answer since the student in question does not participate in Social Studies (school is providing "hygiene services" during that time)
 - SERESC staff member offers little assistance, saying, "It's not a yes or no answer"; however the only choices on the data collection form are 'Yes,' 'No,' or 'N/A'
 - After 33 minutes, the team has only completed three of the access statements; the process is quite rushed on this day
 - 7th and 8th access statements are marked as 'N/A' by the team...not sure how these can be marked 'N/A'
 - 7th statement: "Student participates in the general curriculum in a regular education setting with non-disabled peers as appropriate, with necessary supports" (underlined in the original).

- 8th statement: “When participating in a regular education setting with non-disabled peers with necessary supports, student has made progress in the general curriculum” (underlined in the original)
- Section 2: Transition
 - Facility’s responses regarding grade-to-grade and school-to-school transition appear to be appropriate
 - Postsecondary transition is glossed over by the team – even though these components are included in the student’s IEP
 - Some items are discussed and others are not
 - Page 10 of the data collection form is skipped altogether
 - Includes items about measurable postsecondary goals, courses of study, relationship between annual goals and postsecondary goals, and involvement of outside agencies
 - Skipping this is distressing since the student’s IEP has a transition plan that is lacking
 - “Transition Statements” section
 - Item 3 marked yes (“Collaboration has occurred between general and special education staff in IEP development and in transition planning”) – even though a regular education teacher of the child did not participate in the IEP meeting
- Section 3: Behavior Strategies and Discipline
 - Team skipped pages 15, 16, and the top of page 17
 - “Behavior Strategies and Discipline Statements” section
 - Item 4 (“If appropriate, a functional behavior assessment has been conducted”) marked ‘No’
 - SERESC staff: “I think it would have been appropriate to do it.”
 - No discussion or comment from staff about doing one now, despite student’s increasingly poor behavior and regression on goals.
 - Item 9 (“Results of behavior intervention strategies are evaluated and monitored”) marked ‘Yes’
 - No verification by SERESC staff – director just taken at his/her word
 - Director: “I can pull a report for you,” but the team deems that unnecessary (doesn’t make sense given the student’s lack of behavioral progress)

Case Study #2 (SPEDIS ID#XXXX615)

- 17 year-old student with a Learning Disability
- Initially found eligible in 2008, but first IEP not developed or implemented until September 2009 (school district in Massachusetts was at fault)

- Currently in his/her second stay at this particular facility
- Academic skills are mixed
 - Difficulty with math calculation, written expression, academic application, and reading
 - Relative strengths in written language and academic knowledge (average performance)
- DOES NOT HAVE A CURRENT IEP (Director: "There is no IEP")
 - Last legitimate IEP expired in September of 2011
 - A draft program is being followed, one that was developed in January soon after the student arrived at the private facility
 - The draft document shown to the Program Approval team during this visit was sent to the sending district in March
 - The facility has been trying to get information from the sending district since January when the student arrived.
 - Director has reportedly urged the student's parent to contact Disability Rights Center, but the parent is unwilling
- Four annual goals on the document that is serving as an IEP
 - Reading comprehension: move from a 6.8 grade-level equivalent (GE) to a 7.8 (GE)
 - Writing: 5 or more paragraphs on 80% of his/her writing assignments (baseline: usually 3-sentence paragraphs)
 - Organization: "...use [his/her] organizations (sic) skills and transfer these skills over to real life situations with 99% accuracy..." (baseline is not specified)
 - Math calculation: move from a 5.6 GE to a 6.5 GE
- Postsecondary transition
 - Postsecondary goal for education/training and employment: "...will attend college in order to prepare for a career in Health and Human Services."
 - Draft IEP also includes several other generic transition-related goals
 - Instruction "Post School Goal": "[Student name] will attend a 4 year college."
 - Community Experience "Post School Goal": "[Student name] will participate in meaningful, age appropriate leisure activities within the greater community."
 - Development of Employment and Post-School Adult Living "Post School Goal": "[Student Name] will obtain part time/after school employment."
 - Acquisition of Daily Living Skills and Functional Vocational Evaluation "Post School Goal": "[Student name] will have the skills necessary to live independently as an adult."
 - Draft IEP does not include Courses of Study
- Services

- Counseling 1x/week for 60 minutes per session
- Recreation Therapy
 - Listed on the Draft IEP, but frequency is marked as 'N/A' – duration and location are blank
 - During the previous case study, the Director stated, “We just don’t offer recreational therapy during the school months.”
- “Academic Support” 3x/week for 60 minutes per session
 - This service was described in the case study presentation given by school staff
 - Involves 1:1 academic counseling, study skills training and tutoring, and access to educational resources
- “Therapeutic Groups” 3x/week for 60 minutes per session
- “Family Support” 3x/month for 60 minutes per session
 - Two in-home visits by school staff
 - One on-campus visit by parent
- Other services not included in the Draft IEP
 - “Life skills” provided to students at the facility
 - Other therapeutic groups provided at the school
- Other apparent problems not fully probed during the case study visit – other than the fact that the student has a disability but does not have an IEP
 - Student’s eligibility under the LD criteria is questionable
 - When the student left this facility in March of 2011, his/her NEAT scores indicated that he/she was at a 10.1 GE in reading comprehension (would have been roughly on grade level)
 - When he/she reentered the facility in January 2012, his/her score on the same measure dropped to a 6.8 GE
 - When the evaluator raised the question of exclusionary factors and how the team could rule out the lack of appropriate reading instruction in finding the student eligible under the state’s LD criteria, team members stated it was a “good question,” but it was not probed further
 - In light of the student’s previous reading performance at the school (10.1 GE), the target expressed in the student’s proposed reading goal seems inappropriate
 - No indication that parents were provided with a copy of the *Procedural Safeguards and Statute of Limitations*
 - Draft IEP does not contain a list of participants – cannot determine who exactly was involved in creating this plan (doubtful that the participants could reasonably comprise a properly constituted IEP team)
 - Draft IEP states that the student will participate in the statewide assessment “with modifications” – however, the program does not specify which accommodations have been designated for this student

- Draft IEP *does* include a list of instructional accommodations, but the frequency, duration, and location of each of them is not specified
- Student stated that the distractions caused by other students present his/her biggest barrier to learning – this is not reflected in the list of accommodations on the draft IEP
- Evidence of progress in the general curriculum
 - Has earned only seven credits; needs fourteen more to graduate
 - English grade dropped from the 2nd quarter to the 3rd quarter
- Evidence of progress on draft IEP goals
 - Progress on draft IEP goals was unclear
 - Average daily behavior self-rating appears to have dropped somewhat from January through March
 - January average about ‘6.4’; March average about ‘5.8’
 - Facility staff report that a ‘5’ is an average score
- **Evaluator’s Impressions and Observations of this Case Study**
 - **Services being provided to the student (pursuant to his/her draft IEP) are not individualized – the same services were listed on the IEP of the another student (SPEDIS ID #XXXX180) whose IEP was reviewed during this Program Approval visit**
 - **IEP services are a reflection of the “program” that is in place at the facility and are not individualized to the student’s unique needs**
 - **Student’s transition plan lacks Courses of Study, and it is unclear if the student requires the involvement of any outside agency when it comes to the provision of transition services (or payment for such services)**
 - **Student is clearly being deprived of FAPE (since he/she does not have an IEP in place)**
 - **Student may not be eligible under the LD criteria in the first place, due to his/her spotty school attendance record (see above)**
 - **Multiple procedural problems (see above)**

Case Study Data Collection Form for Student #2 (SPEDIS ID#XXXX615)

- Initial facts to keep in mind
 - This sheet is filled out by school staff *prior to* the Program Approval visit; Program Approval team (which is lead by SERESC staff) just reviews the school’s results and asks questions for clarification.
 - There was confusion among the Program Approval team members about how to complete this part of the process since the student does not have a current IEP in place
 - SERESC staff: “Are we evaluating effort or are we evaluating the current state...not having a current IEP?”
 - Team was not sure how to proceed

- Ultimately, SERESC staff decided to interview staff at the student's resident district about this situation at a later date

Case Study #3 (SPEDIS #XXXX699)

- 16 year-old student with a disability: OHI (ADHD-related)
- Student believes he/she is an 11th grader; however, IEP states that he/she is a sophomore with an anticipated graduation year of 2014
- NOTE: focused review team members were not provided with copies of this student's IEP; only SERESC staff were able to look through the document first-hand
- Details from the Case Study Data Collection Form
 - Section 1: Access to the General Curriculum
 - Item 1 asks about the "individual, classroom based school wide and/or district measures" that have been used to determine the student's PLAAFP: the student's Present Levels are very general and only highlight the student's trouble staying on top of schoolwork and his need to pass classes
 - Item 2 asks about the student's daily schedule and "opportunities" to access the general education curriculum
 - Facility staff have no idea what the student was working on in his/her home district
 - The student is working on three courses via the online Plato program: pre-algebra, English 9, and astronomy
 - Total amount of time dedicated to academic instruction (general education): *three hours per day* (much less than he/she would receive at his/her resident school)
 - SERESC staff: "Yes there's opportunity, but the question is: 'is it enough?'"
 - Item 7 asks about the student's progress toward meeting graduation requirements:
 - The facility did not receive any transcripts from the student's resident district
 - It appears that the student is behind on credits (judging from the fact that he/she is taking pre-algebra and English 9 as a sophomore or junior)
 - Section 2: Transition
 - Some school staff asked if this section was dealing with transition to/from the private facility or if it was dealing with postsecondary transition
 - Data collection form states that these items apply to "...age 16 or older, as well as from grade to grade and school to school."

- However, all the federal citations on the form are focused on postsecondary transition
 - SERESC staff: “I think it means both transitioning in and out of here.”
 - *Evaluator’s note: there are huge differences in the requirements for postsecondary transition vs. transition between schools. The team’s lack of clarity here could make a huge difference in how compliance is determined in this area.*
- Item 4 asks about the involvement of outside agencies
 - School staff reported that Vocational Rehabilitation staff are supposed to work with the student
 - Director: “Job Corps is something that could be looked at for [him/her]. It’s so hands-on.”
 - Because the evaluator did not see the actual IEP, it is unclear if involvement of these agencies is designated in the program or if they were even invited to the IEP meeting
- NOTE: Items 7 and 3 are identical on the data collection form
- Item 10 asks about the student’s courses of study
 - Courses of study are listed for this student through his/her 12th grade year
 - However, the courses of study do not show enough credits to meet graduation requirements
- During student interview, the student reported that he/she was unsure if he/she had ever participated in an IEP meeting
- Section 3: Behavior and Discipline Strategies
 - Student’s behavior has been positive since arriving at the private facility
 - Item 2: Student doesn’t have a BIP but doesn’t appear to need one
 - NOTE: student reported that he/she has no place to live when this private placement expires
- Relevant information from the student interview
 - Student does not believe he/she is making enough progress while at the facility
 - He/she remarked that there is only a “three-hour day” at the school
- SERESC staff reviewed the IEP while other focused review team members conducted an observation during the student’s art class
- Wrap-up meeting
 - SERESC staff: a citation will be issued due to the fact that the facility is not issuing progress reports on students’ IEP goals while they are placed at the school

- SERESC staff: there *may be* a citation about the fact that students only get three hours of instruction per day
- SERESC suggestions
 - Record and report time based on content areas (rather than just calling it “class time” on the schedule)
 - Ensure that students are enrolled in classes need for graduation or for postsecondary purposes
- SERESC staff: “Basically it’s a sound program.”
- **Evaluator’s Impressions and Observations of this Case Study**
 - **The fact that students are only receiving three hours of academic time per school day is distressing – how could adequate access to the general curriculum be provided in less than half the time of the resident school’s day?**
 - **In an environment in which students arrive and depart so quickly, it seems odd to say the least that the focused review team did not check closely to see how the facility is *implementing students’ IEPs*.**
 - **Is the facility amending programs when students arrive?**
 - **What does the school do if a student requires a service that is not readily available at the facility?**
 - **A lot of time was spent on a tour of the facility, observing the art class, and conducting a student interview. It seems that if determining special education compliance is truly an aim of this process, multiple case studies are required.**
 - **Without being provided with a copy of the student’s IEP to review personally, it is hard to have an understanding of what else the focused review team might have missed in this student’s case study process**

Section IV

Are the findings made by monitoring reports clear? Is the evidence set forth in reports adequate to support the findings made? Are the reports released in a timely manner? Are systemic findings made? Are substantive findings made?

Clarity of Monitoring Findings

Summary Reports are not consistently clear on two levels:

1. Purpose: The reports fail to clarify whether the purpose of Focused Monitoring and Program Approval/Case Study reviews is
 - a. to provide educational institutions with guidance and resources necessary to affect general school improvement, or
 - b. to fulfill the special education supervision requirements found in 34 C.F.R. §300.600.
2. Content pertaining to special education compliance: The reports are not consistently clear regarding the actual statutory requirement violated, the specific basis for findings of noncompliance, and the exact actions needed to correct noncompliance.

Purpose

SERESC's most recent annual report expresses the following goal of Focused Monitoring and Program Approval:

Goal 1: To establish and maintain an effective New Hampshire Special Education Program Approval and Improvement Process that aligns with IDEA 2004, supports the priorities identified in the State Performance Plan (SPP) and includes an expanded parent role, *to ensure that all NH children and youth with disabilities have a free appropriate public education (FAPE) in the least restrictive environment (LRE) that promotes a high quality education.*¹³¹

Eleven public school districts participated in the Focused Monitoring year-long process in 2009/2010 and 2010/2011. The resulting Summary Reports are posted on the NHDOE website. The reports do not express clearly and consistently that the purpose of Focused Monitoring activities conducted by SERESC on behalf of the Bureau of Special Education is to *“ensure that all NH children and youth with disabilities have a free appropriate public education (FAPE) in the least restrictive environment (LRE) that promotes a high quality education.”*

¹³¹ *Special Education Program Approval and Improvement Process 2010 - 2011 Year End Summary Report*, 12/21/11, p. 5; emphasis added.

While procedural compliance and reduction of the special education achievement gap are certainly important components of the reports, the primary focus appears to be general school improvement. Seven of the twelve Summary Reports contain the following introductory language reflecting an emphasis upon general school improvement:

The mission of the Special Education Program Approval Process is to support the advancement of educational *results for all learners* (emphasis added). This aim is integral to the Focused Monitoring Process in select New Hampshire School Districts, where a strategic and collaborative process is developed to address the Achievement Gap between students with disabilities and their non-disabled peers. To meaningfully address this disparity, a systems perspective is essential to best create strategies that represent *gains for all students* (emphasis added), including those with unique learning abilities and challenges. Accordingly, the Focused Monitoring Process is designed to incorporate current school and school district improvement goals and strategies in this yearlong effort.

The New Hampshire Department of Education has elected to address the achievement gap as the 'key performance indicator' for meeting the statutory requirements in the NCLB legislation.¹³²

Each of the Summary Reports includes one or more "essential questions" to define the focus of the year-long process. Several reports ask, "What are the contributing factors to the achievement gap between students with disabilities and their nondisabled peers, and how can this gap be narrowed?" Several of the reports also include the following questions and statements, once again emphasizing general school improvement rather than special education compliance:

What are the contributing factors to the achievement gap between students performing in the proficient range and students performing in the non-proficient range and how can this gap be narrowed?

What are the contributing factors to the achievement differential among other student demographic factors including poverty, first language (ELL), race/ethnicity and gender and how may this difference be narrowed?

What are the contributing factors in our current service delivery model that impact student achievement in mathematics?

¹³² 2009/2010 and 2010/2011 Final Reports; NHDOE website at http://www.education.nh.gov/instruction/special_ed/final_reports.htm. All reports quoted in this section from reports are found at this site.

The district's plan to focus work to improve outcomes for all students, including students with disabilities, is important and timely work to be done.

Focused Monitoring (FM) includes: 1. Expanding the FM essential question to include all students and all subgroups in the district, rather than just focusing on identified students....

Additionally, nine of the twelve Summary Reports contains an "Action Plan" with the following introductory language:

The Focused Monitoring Action Plan is intended to describe the specific Goals, Objectives and Strategies that will be implemented as a result of the year long FM planning process. This strategic process serves as a "roadmap" for advancing the *learning for all students* (emphasis added) while projecting the specific strategies that will...address the achievement gap between students with unique learning challenges and abilities and their peers.

The following is a typical goal taken from one of the Focused Monitoring Action Plans:

By June 30, 2013, the *growth targets of all students* (emphasis added) in grades 3-8 will increase from 72% to 80% through strengthening collaboration, core instruction, and student engagement, as measured by 2012 NECAP Growth Targets.

SERESC conducted fourteen Program Approval/Case Study reviews in 2009/2010 and five Program Approval/Case Study reviews in 2010/2011. Each of the Summary Reports posted on the NHDOE web site contains the following introductory statements regarding the purpose of the reviews:

The New Hampshire Department of Education (NHDOE) conducted a Special Education Program Approval Visit to [name of school] on [dates] for the purpose of reviewing the present status of programs and services made available to children and youth with educational disabilities.

As part of this compliance review, case studies were randomly selected by the NHDOE prior to the visit, and staff was asked to present these case studies at the visit to determine compliance with state and federal special education rules and regulations.

Each report also contains the following statements:

Findings of noncompliance are defined as deficiencies that have been identified through the Case Study Compliance Review Process, which are in violation of state and federal special education rules and regulations.

Issues of significance (emphasis added) are defined as systemic deficiencies that impact the effective delivery of services to all students (emphasis added), including those with educational disabilities.

Summary Reports reviewed by the evaluators fail to clearly and consistently communicate the purpose of activities conducted by SERESC on behalf of the NHDOE. In its most recent annual report, SERESC states that the number one goal of Focused Monitoring and Program Approval is “to ensure that all NH children and youth with disabilities have a free appropriate public education (FAPE) in the least restrictive environment (LRE) that promotes a high quality education.”

The Focused Monitoring Summary Reports, however, emphasize “results for all learners,” and “gains for all students.” According to the Summary Reports, the “Focused Monitoring Action Plan...serves as a ‘roadmap’ for advancing the learning for all students.” Likewise, Program Approval/Case Study Summary Reports identify “issues of significance” as those “that impact the effective delivery of services to all students.” While the reports do address special education compliance monitoring, pursuant to 34 C.F.R. §300.600 *et seq.*, their primary focus appears to be general school improvement.

Content

Twenty-four LEAs monitored between 2007-08 and 2010-11 were surveyed by the evaluators. Of the 17 districts that responded, 94% reported that they had findings of noncompliance. Of these districts, the large majority expressed positive attitudes about the clarity and accuracy of the findings and the thoroughness of the IEP review process. 100% of the districts stated that the monitoring report was clear and that it was issued in a timely manner. In addition, 79% stated that the findings were related to achieving better outcomes for students.

In 2009-2010 and 2010-2011, NHDOE issued twelve Summary Reports following Focused Monitoring reviews conducted in eleven public school districts. The collective reports included 73 findings of Child Specific and Program Specific noncompliance. In 2009/2010 and 2010/2011, SERESC issued Summary Reports following Program Approval/Case Study reviews at nineteen private schools. The collective reports included 89 findings of Child Specific and Program Specific noncompliance.

Of the total 162 findings of noncompliance, the most common finding was that IEPs lacked measurable goals, usually cited as a general violation of 34 C.F.R.

§300.320. Few of the Summary Reports identified which elements of measurable goals were deemed missing (*e.g.*, baseline data). Likewise, few of the reports noted 34 C.F.R. §300.320(a)(2)(i) as the specific regulation violated.

In thirty Focused Monitoring and Program Approval/Case Study Summary Reports reviewed by the evaluators, the second most common finding of noncompliance was that transition plans did not include “all required components,” usually cited as a general violation of 34 C.F.R. §300.320. As with lack of measurable goals, few of the Summary Reports identified which elements of the transition plan were noncompliant (*e.g.*, transition services). Additionally, almost all of the reports used the aforementioned general citation for violations of this sort – the same citation used for violations of IDEA’s measurable annual goals requirement.

In addition, the majority of the Focused Monitoring Summary Reports contain "Suggestions for Improvement," such as:

All goals should be reviewed and updated on an annual basis.¹³³

Address all areas of academic need in IEPs and revise as necessary if the student is not making anticipated progress.¹³⁴

Link the present levels to the annual measurable goals.¹³⁵

Provide explanations as to why students are removed from the general education classroom, not just what they will be doing and/or where they will be going.¹³⁶

Attach a goal to the IEP when a need is identified in the present levels.¹³⁷

As the five examples listed here represent statutory requirements, it is unclear why they are suggestions rather than required corrective actions. One would reasonably conclude, for example, that the suggestion to review IEPs annually would have been based upon evidence of some sort that the LEA had failed to comply with the provisions of 34 C.F.R. §300.324(b)(1)(i). Such evidence, if confirmed, should result in a finding of noncompliance and some type of required corrective action, not merely a "suggestion" to comply with federal regulations.

¹³³ 2010/2011 Summary Report, Fremont School District, SAU 83, p. 15.

¹³⁴ 2010/2011 Focused Monitoring Report, GRS Cooperative School District, SAU 20, p. 8.

¹³⁵ 2010/2011 Focused Monitoring Summary Report, Salem School District, SAU 57, p. 11.

¹³⁶ 2010/2011 Focused Monitoring Report, Newfound Area School District, SAU 4, p. 17.

¹³⁷ 2010/2011 Focused Monitoring Summary Report, Salem School District, SAU 57, p. 11.

Adequacy of Evidence in Support of Findings

SERESC conducted twelve Focused Monitoring reviews in 2009/2010 and 2010/2011 on behalf of the NHDOE. Each of the resulting Summary Reports explains that the compliance review was based upon:

- Review of randomly selected IEPs
- Review of LEA Focused Monitoring Compliance Application including:
 - Special Education Policy and Procedures
 - Special Education staff qualifications
 - Program descriptions
- Review of all district Special Education programming
- Review of Out of District Files
- When appropriate, review of student records for students with disabilities who are attending Charter Schools
- Review of parent feedback collected through the focused monitoring data collection activities
- Review of requests for approval of new programs, and/or changes to existing programs

The total 162 findings of noncompliance cover a broad range of topics; however, several key findings are inexplicably missing from the list. For example, it is notable that the SERESC Year End Summary Reports for 2009-2010 and 2010-2011 do not identify any finding that any student was denied FAPE at any school site because of failure to:

- a. Assess the student's needs within required timelines,
- b. Develop an IEP reasonably calculated to result in educational benefit,
- c. Provide a copy of the IEP to all of the student's teachers and service providers, or
- d. Provide all special education and related services delineated in the student's IEP

The lack of findings of noncompliance in these areas implies that all requirements were met at all times in the districts and facilities involved in FM or PA activities over those two years. That conclusion, if valid, would have necessarily been based upon convincing evidence collected during a systematic and thorough review. By extension, findings of noncompliance would have been based upon the same level of consistency and thoroughness.

In addition, the evaluators did not observe consistent application of monitoring procedures during on-site FM and PA reviews, which calls into question the adequacy of evidence needed to support findings contained in Summary Reports. While observing FM and PA reviews, the evaluators observed multiple instances wherein a

determination of compliant practices was based solely upon verbal assertions made by the district or facility being monitored and not upon corroborating documentation provided to and examined by the outside reviewers.¹³⁸ The following are two examples:

- a. The "Focused Monitoring IEP Review – Data Collection Form" asks (page 7, #3), "Is the implementation of special education/related services documented and monitored? Please explain." During five IEP reviews observed by the evaluators in November and December of 2011, the LEA representative(s) simply responded, "Yes," before providing a brief, unsubstantiated description of how services were monitored. No hard copy or electronic service logs were produced as corroborating evidence.
- b. The "Focused Monitoring IEP Review – Data Collection Form" asks (page 7, #4), "Has a complete copy of the IEP been provided to each teacher and service provider having responsibility for implementing the IEP?" During five IEP reviews observed by the evaluator in November and December of 2011, the LEA representative(s) simply responded, "Yes." No other evidence was provided to support the LEA's assertion of compliance.

On at least two occasions observed by the evaluators, findings of compliance were based upon consensus of the review team without addressing all applicable elements of the review instrument. Pages 9 -12 of the "Focused Monitoring IEP Review – Data Collection Form" includes a series of questions designed to determine whether the student's IEP is reasonably calculated to result in educational benefit. Question #1 on page 12 of the form asks, "Considering the answers to each of the [previous questions], were you able to assess the degree to which the IEPs were designed to provide educational benefit (access to, participation and progress in the general education curriculum) in this/these area(s)? Explain." During two IEP reviews observed by the evaluators, because there was not sufficient time available to address all of the questions pertaining to educational benefit, the review team simply answered, "Yes." On two occasions when asked if assessments had been completed within required timelines, the agencies being reviewed answered "Yes" without further inquiry from the review team.

Public school districts complete self-study questionnaires as part of the FM review process and by private schools as part of the PA process. The questionnaires provide space to record where evidence of required policies and procedures may be found and space to list the qualifying credentials of administrators and service providers. As reported by SERESC, the information provided by the agency being

¹³⁸ See Section III of this report for further explanation.

monitored is typically "spot checked" for accuracy by SERESC personnel, since supporting documentation is included with the self-review forms.

Given these facts, the evaluators cannot conclude with confidence that findings contained in summary reports are always supported by adequate evidence. Monitoring procedures observed during FM and PA on-site visits were not always consistent and thorough.

Timeliness of Reports

100% of the 17 districts that responded to the District Survey stated that the monitoring report was issued in a timely manner.

As discussed in previous sections, select IEPs are reviewed for compliance during on-site FM reviews of public school districts and during PA reviews of private schools. As reported by SERESC and NHDOE during interviews with the evaluators, the following steps occur between the time IEPs are reviewed and final reports are issued:

1. An on-site review of selected IEPs is conducted by a review team consisting of LEA (or private school) representatives, volunteer visiting educators, and a SERESC Consultant.
2. The review team records any child-specific or program-specific findings of noncompliance on a Data Collection Form. The findings, if any, are added to a Building Level Data Summary Form.
3. At the conclusion of the site visit, findings of noncompliance recorded on the Building Level Data Summary Form are reported verbally to the LEA (or private school) by members of the review teams.
4. Following the site visits, SERESC uses the Data Collection Forms and Building Level Data Summary Forms to generate a "Letter re: Findings of Noncompliance" for program-specific findings, as well as a "Record of Student Specific Findings." The notices are sent to the LEA (or private school) for review. The LEA (or private school) is afforded ten days to "correct any inaccuracies" and to "validate" the findings of noncompliance.
5. Once the findings of noncompliance are validated, the LEA or private school develops a proposed corrective action plan intended to correct program-specific noncompliance. An "Assurance Form" is completed as the plan to correct child-specific noncompliance.

6. After the proposed corrective action plan has been reviewed and approved by SERESC and NHDOE, the final report is written and published. When a final report is revised, a "revised final report" is issued.

SERESC facilitated nineteen PA reviews in 2009-2010 and 2010-2011. Most of the final reports are posted on the NHDOE web site. The evaluators reviewed the eighteen posted reports to calculate the average number of days that elapsed between the dates of the on-site visits and the dates of the final reports. On average, final PA reports (in some cases "revised final reports") were issued 101 days after noncompliance was first noted by review teams during on-site visits. The number of days ranged from a low of 23 days (November 18, 2010 - December 11, 2011) to a high of 168 days (February 2, 2010 - July 20, 2010).

SERESC facilitated twelve FM reviews in 2009/2010 and 2010/2011. The final reports are posted on the NHDOE web site. The evaluator reviewed eleven of the twelve on-line reports to calculate the average number of days that elapsed between the dates of the on-site visits and the dates of the final reports. One of the reports is undated. On average, final FM reports (in some cases "revised final reports") were issued 131 days after noncompliance was first noted by review teams during on-site visits. The number of days ranged from a low of 94 days (February 17, 2011 - June 1, 2011) to a high of 210 days (December 4, 2009 - July 6, 2010).

The average number of days that elapsed between the date on which findings of noncompliance were "validated" by the LEA (or private school) and the date of the final report is likely less than 101 days, as the findings would have been validated after the on-site visits were completed. However, that information is not available for review, as the dates of validation are not included in the final reports.

Further, data sent to the evaluators by SERESC on 5/31/12 indicated that, for 2009-10 and 2010-11, across all 33 FM and PA reports the average number of days between the last day of the on-site visit and the monitoring report is 79. The number of days ranged from a high of 160 to a low of 22. In 2009-10, for the 21 FM and PA reports the average number of days between the last day of the on-site visit and the monitoring report is 89.9. In 2010-11, for the 12 FM and PA reports the average number of days between the last day of the on-site visit and the monitoring report is 59.92.

Finally, it is unclear why the monitoring system includes a process for the "validation" of findings of noncompliance by the entity under review. Adequately supported findings of noncompliance do not need additional validation.

Systemic Findings

SERESC reviewed nineteen private schools in 2009-2010 and 2010-2011. The 89 findings of noncompliance include 26 child-specific findings and 63 systemic findings. SERESC also reviewed twelve public school districts in those years. The 73 findings of noncompliance include 27 child-specific findings and 46 systemic findings.

The Summary Reports do not clearly and consistently explain the basis for designating a finding of noncompliance either "child specific" or "systemic." The distinction is clear in some instances, but not in others.

The following findings of noncompliance are excerpted from a Summary Report issued in 2010/2011:

Child Specific Finding of Noncompliance

ED # 1109. IEP, CRF 300.320: IEP Goals, Objectives/Benchmarks
5 IEPs lacked annual measurable goals

Systemic Findings of Noncompliance

Ed 1109.01 Elements of an Individualized Education Program, §300.320(2)(i):
There is a lack of consistently written measurable IEP goals district-wide¹³⁹

It appears from the example that each IEP lacking measurable goals served as the basis for a child-specific finding of noncompliance, and that the five individual findings collectively served as the basis for a finding of systemic noncompliance.

The following is an additional example of corresponding child-specific and systemic findings of noncompliance:

Child Specific Finding of Noncompliance

ED #1107.05, CFR 300.303 Written Evaluation Summary
There was no evidence of written summaries in 3 IEPs.

Systemic Finding of Noncompliance

Ed. 1107.05 CFR 300.303
Evaluation Summaries were not present in files.¹⁴⁰

In some instances, the basis for a systemic finding of noncompliance is not clear, as in the following two examples:

Systemic Findings of Noncompliance

Ed. 1108.(b) CFR 300.306:

¹³⁹ 2010/2011 Focused Monitoring Summary Report, Salem School District, SAU 57, p. 14.

¹⁴⁰ 2010/2011 Focused Monitoring Summary Report, Salem School District, SAU 57, p. 14.

The IEP Team composition did not have the appropriate representation in one of the out of district files.¹⁴¹

ED 1109.01 (a) (1): Transition; CFR 300.320

For students 16 years and older, transition plans must include all required components. The one IEP reviewed for a student 16 and older did not include all IEP required components¹⁴²

The examples are taken from Summary Reports in which there are child-specific findings of noncompliance, but none related to the composition of an IEP team or the content of a transition plan. Each of the "systemic" findings appears to be based upon a single IEP review. The reports provide no explanation as to why a single, child-specific finding of noncompliance would result in a "systemic" finding.

Conversely, some Summary Reports contain multiple findings of the same child-specific noncompliance, but no corresponding systemic findings. The following examples are excerpted from Summary Reports:

Child Specific Findings of Noncompliance

ED 1109.03/CFR 300.43: Transition Services

Two IEPs out of four did not include a statement of needed transition services and considers community experiences.¹⁴³

ED 1107.01 CRF 300.301: Evaluation

Two out of four of the case studies did not complete a three year evaluation in a timely fashion and did not convene an IEP Team to determine that an evaluation was not necessary or to extend the time frame¹⁴⁴

The reports provide no explanation as to why multiple, child-specific findings of noncompliance would not result in a "systemic" finding.

In conclusion, the basis for making a finding of systemic noncompliance does not appear to be consistent throughout the Summary Reports. In some instances, there is a finding of systemic noncompliance based upon multiple findings of the same child-specific noncompliance. In other instances, a finding of systemic noncompliance is based upon a single finding of child-specific noncompliance. In still other instances, multiple findings of the same child-specific noncompliance did not result in a systemic finding.

¹⁴¹ 2010/2011 Focused Monitoring Summary Report, Salem School District, SAU 57, p. 14.

¹⁴² 2010/2011 Focused Monitoring Report, GRS Cooperative School District, SAU 20, p. 11.

¹⁴³ 2009/2010 Summary Report, Coe-Brown Northwood Academy, p. 12.

¹⁴⁴ 2009/2010 Summary Report, Coe-Brown Northwood Academy, p. 11.

Substantive Findings

The great majority of FM findings (95%) were procedural in nature (*e.g.*, lack of measurable IEP goals, or improper composition of the IEP team). Very few of the findings (5%) pertained to substantive matters (*e.g.*, placement in the LRE or needed services). There were no findings of denial of FAPE at any of the eleven school districts. Two of the school districts reviewed in 2009-2010 and 2010-2011 had no findings of noncompliance at all.

As with FM reports, the great majority of findings (93.3%) contained in PA reports were procedural in nature (*e.g.*, governance, staff qualifications). Very few of the findings (6.7%) pertained to substantive matters (*e.g.*, access to the general curriculum). There were no findings of denial of FAPE at any of the nineteen private schools. Two of the nineteen private schools reviewed in 2009-2010 and 2010-2011 had no findings of noncompliance at all.

The following examples of substantive findings of noncompliance are excerpted from Summary Reports issued in 2009-2010 and 2010-2011:

ED 1114.05(g), CRF 300.320 Access to equal educational opportunities; access and ability to progress in general curriculum

[The school's] curriculum is not sufficient to enable students enrolled at [the school] to have access to equal education opportunities.¹⁴⁵

Ed. 1106 Process; Provision of FAPE CFR 300.124 Part C Transition

(*Note: The finding is not otherwise specified in the Summary Report.*)¹⁴⁶

Ed 1113.08 Curricula Full Access to the General Curriculum Equal Education; CFR 300.320

[Students] do not have full access to the general curriculum, thus they are not provided with equal educational opportunities as [other students].¹⁴⁷

Ed 1111.02 (a)/CFR 300.116: Placement Decisions

Two out of three IEPs did not have evidence that the Least Restrictive Environment had been discussed nor was there a plan to transition to a less restrictive environment.¹⁴⁸

Accommodations and Modifications Ed 1113.08 b Access to Curriculum

Three of the IEPs reviewed lacked evidence of appropriate accommodations and modifications that are critical to enable students'

¹⁴⁵ 2010/2011 Summary Report, The Cedarcrest School, p. 12.

¹⁴⁶ 2009/2010 Summary Report, Lakeview School, p. 13.

¹⁴⁷ 2010/2011 Summary Report, Granite State High School, p. 11.

¹⁴⁸ 2009/2010 Focused Monitoring Summary Report, Hinsdale School District, SAU 92, p. 18.

access and progress in the general education curriculum and nonacademic/extracurricular services.¹⁴⁹

Placement Decisions Ed. 1111.02; 34 CFR 300.116 Placements

Two of the 6 IEPs reviewed did not provide an explanation of the extent, if any, to which the student will not participate with nondisabled peers in the regular class and other educational settings, including nonacademic settings.¹⁵⁰

Ed 1113.08 Related Services and Curriculum; 34 CFR 300.34

Two of seven (7) IEPs reviewed contained student specific Findings of Noncompliance. Identified student academic, developmental and functional needs were not addressed by services in the IEP¹⁵¹

Thus, even using a broad definition of a substantive violation, New Hampshire's current special education monitoring system makes very few substantive findings. This is not surprising given the conclusions reached in Sections II and III of this report.

¹⁴⁹ 2009/2010 Focused Monitoring Summary Report, Newport School District, SAU 43, p. 10.

¹⁵⁰ 2009/2010 Focused Monitoring Summary Report, Newport School District, SAU 43, p. 11.

¹⁵¹ 2010/2011 Summary Report, Fremont School District, SAU 83, p. 17.

Section V

Do Corrective Action Plans set forth activities reasonably calculated to result in compliance? Are CAPs developed and approved in a timely manner? How is implementation of CAPs tracked? What process is used to verify the performance of corrective activities? Is the process adequate? What is the process of verifying that noncompliance has been corrected? Is the process adequate?

After a monitoring activity has concluded with findings of noncompliance and an order of compliance,¹⁵² the regulations require the appointment by the Commissioner or designee of personnel from the Bureau of Special Education "to monitor the execution" of the order of compliance.¹⁵³

In 2005, OSEP informed NHDOE that its former process of requiring correction of noncompliance within one year of approval of a CAP did not comply with the IDEA; NHDOE was informed that correction must occur within one year of the date of identification of noncompliance, and that "the date of identification would be the date of the final report, letter, memorandum or other mechanism the State uses to inform the local educational agency of the noncompliance."¹⁵⁴ That issue was subsequently corrected.

OSEP's 2009 verification visit finding regarding NHDOE's failure to exercise adequate supervision and control over SERESC (see Section I above) also affected its conclusion regarding verification of the correction of noncompliance: OSEP could not "conclude that the State has a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner."¹⁵⁵ The revised MOU discussed above resolved the issue of supervision and control of SERESC to the satisfaction of OSEP.

In this section, the ways in which school districts and private facilities are directed to correct noncompliance through the development and implementation of Corrective Action Plans (CAPs) is explored. In addition, the means by which the state determines that a finding of noncompliance has been adequately corrected is examined.

Adequacy of Corrective Action Plans

Twenty-four LEAs monitored between 2007-08 and 2010-11 were surveyed by the evaluators. Seventeen districts responded to the survey. All of the districts that stated that they had findings of noncompliance indicated that they developed a CAP and indicated that it was reviewed and approved by either NHDOE or SERESC. In addition, over 90% stated that the CAP ensured correction of child-specific and

¹⁵² 186-C:5 (V) (a); Ed 1125.01 (a)

¹⁵³ Ed 1125.02 (a)

¹⁵⁴ OSEP FFY '03 APR letter, 8/31/05, pp. 2-3.

¹⁵⁵ OSEP 2009 verification visit letter enclosure, 1/15/10, p. 4.

district-wide noncompliance. When asked how helpful the CAP was in terms of resolving findings of noncompliance, 80% said "quite a bit" or "a lot." Specifically:

- 7% said "hardly at all"
- 13% said "some"
- 40% said "quite a bit"
- 40% said "a lot"

The districts were also asked if they received technical support from NHDOE in implementing the CAP or program improvement plan and if so, how helpful the support was. Slightly more than half (59%) of the districts indicated that they had received technical assistance and support from NHDOE. Of those that did not, 14% (two districts) stated that their district would have benefitted had they received support from NHDOE.

Of those that received NHDOE support, 100% said that they received the right amount of support and 60% said that the quality of assistance provided was "very good" or "excellent." Specifically,

- 10% said "fair"
- 30% said "good"
- 30% said "very good"
- 30% said "excellent"

In addition, the districts were asked if they received technical support from SERESC in implementing the CAP or program improvement plan and if so, how helpful the support was. A large majority (82%) of the districts indicated that they had received technical assistance and support from SERESC. Of those that did not, no district stated that their district would have benefitted had they received support from SERESC.

Of those that received SERESC support, 93% said that they received the right amount of support; 7% (one district) stated that they received too little support. 86% said that the quality of assistance provided was "very good" or "excellent." Specifically,

- 7% said "fair"
- 7% said "good"
- 36% said "very good"
- 50% said "excellent"

Program Approval Child-Specific Corrective Actions

Thirteen Summary Reports for private schools reviewed in 2009-2010 and five Summary Reports for private schools reviewed in 2010-2011 include a total of 26

child-specific findings of noncompliance, ranging from one school with four findings to four schools with no findings. Most of the 26 findings of noncompliance may be grouped into two categories:

Measurable Goals (12 findings)
Transition Planning (8 findings)

The eighteen online PA Summary Reports reviewed by the evaluator did not include required corrective actions to address the 26 findings. SERESC, upon request, provided the evaluators with two examples of completed "Assurance Forms," which serve to reflect the steps taken to correct child-specific noncompliance. One Assurance Form resulted from a PA review conducted in 2009-2010 and the other from a review conducted in 2010-2011.

The Assurance Form from 2009-2010 reflects corrective actions pertaining to measurable goals and transition planning. The corrective action plan regarding measurable goals contains the following sections:

Findings: ED 1109.01/CFR 300.320 Contents of an IEP: lack of measurable goals

Corrective Actions Taken to Resolve Student Specific Finding(s): Some of the goals in the student's IEP were measurable while others were not. The student left [the private school] in the spring. [The student] has been engaging in an alternative plan and [the student's] IEP is currently being newly developed with measurable goals.

Date Finding(s) Met: 10/8/10

The Assurance Form states, "Due by October 10, 2010." The form was signed and dated by the Special Education Director on 10/8/10.

The corrective action is wholly inadequate. It is not reasonably calculated to result in compliance as it does not specify what actions are to be taken, when and by whom, or the standard by which compliance would be measured. The Assurance Form merely implies that the student's IEP will include measurable goals on some future date.

Additionally, the completed form provided by SERESC in April 2012 does not indicate whether the planned IEP team meeting had actually been convened since the initial findings of noncompliance in 2009-2010. Likewise, the form does not indicate whether SERESC or NHDOE has accepted the completed form as evidence of compliance with ED 1109.01 and 34 C.F.R §300.320.

The Assurance Form from 2010-2011 contains only corrective actions pertaining to measurable goals. The corrective action plan regarding measurable goals contains the following sections:

Findings: ED 1109.01 Elements of an IEP; 34 CFR 300.320 Contents of an IEP:
Lack of measurable goals

Corrective Actions Taken to Resolve Student Specific Finding(s): The IEP in question will be corrected at an IEP meeting that has been scheduled for May 10, 2011. (Note: The corrective actions also include staff training and follow-up monitoring.)

Date Finding(s) Met: (There were no entries in this portion of the completed form.)

The Assurance Form states, "Due by June 10, 2011." The form was signed and dated by the Special Education Director on 05.04.11.

In this example the corrective action does not specify the standard by which compliance would be measured. Once again, the completed form provided by SERESC in April 2012 does not indicate whether the planned IEP team meeting was actually convened. In addition, the form does not indicate whether SERESC or NHDOE has accepted the completed form as evidence of compliance with 34 C.F.R. §300.320, or whether the amended IEP would be reviewed for compliance.

Focused Monitoring Child-Specific Corrective Actions

None of the six Summary Reports from Focused Monitoring reviews conducted in 2009-2010 include child-specific findings of noncompliance. Four of the six 2010-2011 reports include a total of 27 child-specific findings of noncompliance. These findings of noncompliance fall into three categories:

Measurable Goals (10 findings)
IEP content other than measurable goals (13 findings)
Transition Planning (4 findings)

None of the twelve online FM Summary Reports reviewed by the evaluator include any required corrective actions to address the 27 findings of child-specific noncompliance. Four of the twelve reports do include the following statement:

PLEASE NOTE: If applicable, Child Specific Findings of Non-compliance identified through the IEP Review Process and noted separately on the Assurance Form, are required to be resolved within 45 days.

However, none of the online Summary Reports include an Assurance Form for review. Consequently, the evaluators were not able to evaluate the adequacy of child-specific corrective actions associated with FM reviews.

Program Approval Systemic Corrective Actions

The fourteen PA Summary Reports for private schools reviewed in 2009-2010, and the five PA Summary Reports for private schools reviewed in 2010-2011 include a total of 63 systemic findings of noncompliance, ranging from one school with fourteen findings to one school with no findings.

Most of the findings can be grouped into one of four categories:

- Administrative (23 findings, e.g., staff certification, required policies/procedures)
- IEP Content (13 findings, e.g., measurable goals, transition services)
- Access to General Curriculum (8 findings)
- IEP Implementation (4 findings)

None of the eighteen online PA Summary Reports reviewed by the evaluator included any required corrective actions to address the 63 findings of noncompliance.

Upon request by the evaluators, SERESC provided a blank copy of the form used to record and track systemic corrective actions, titled, "NHDOE Special Education Program Approval and Improvement Process Corrective Action Plan." SERESC also provided a copy of one completed corrective action plan resulting from a Program Approval/Case Study review conducted in 2009-2010 and a copy of a completed corrective action plan resulting from a review conducted in 2010-2011.

The corrective action plan from 2009-2010¹⁵⁶ contains eight systemic corrective actions to address findings of noncompliance related to:

- Measurable IEP goals
- Measurable transition goals
- Transition planning
- Termination of eligibility
- Certification of administrative staff
- Access to the general curriculum
- Daily lesson plans
- Discipline

The corrective action to address discipline contains the following sections:

SYSTEMIC FINDINGS OF NON-COMPLIANCE CFR 300.350 Discipline:
"The...Student and Parent Handbook (January 2010) states that grades are

¹⁵⁶ Second Start Alternative High School, Program Approval/Case Study review, 2009-2010.

based on a combination of academics and behavior. This is in violation of IDEA; behavioral issues are to be addressed through the development of behavior management plans in the IEP or Behavior Improvement Plans, all with measurable goals.”

CORRECTIVE ACTION: This was changed for the 2010-2011 Student and Parent Handbook which was updated in August 2010.

PERSON(S) RESPONSIBLE: Director of Adolescent Services

EVIDENCE OF COMPLIANCE AND EVIDENCE OF IMPACT ON STUDENTS, AS APPROPRIATE: The changes can be observed in the updated Student and Parent Handbook. Also, this will be observed in IEP’s and Behavior Management Plans.

TIMELINE: 11/18/10

DATE OF FOLLOW UP VISIT (or date of acceptance of evidence submitted to indicate correction)...Note as Met, In Process or Not Met (Note: The corrective action plan provided by SERESC in April 2012 did not reflect any follow-up visits or the status of the corrective action.)

The corrective action is inadequate. It does state who will take action and by when, but does not specify the changes necessary to comport with the requirements of 34 C.F.R §300.350. In addition, it fails to specify the standard by which compliance will be evaluated, except to imply that IEPs and Behavior Management Plans will improve as a result of changes made to the Student and Parent Handbook. It is unclear whether such changes will need to be verified prior to clearing the finding.

The corrective action plan from 2010-2011¹⁵⁷ contains two systemic corrective actions: one to address noncompliance regarding measurable IEP goals, and one to address noncompliance regarding professional development. The corrective action to address measurable goals contains the following sections:

SYSTEMIC FINDINGS OF NON-COMPLIANCE: Ed 1109.01 Elements of an IEP CRF 300.320 Contents of an IEP: As neither of the two IEPs reviewed contained measurable goals, the visiting team extrapolated that it is likely that other IEPs are also lacking measurable goals. All IEPs must be in full compliance with ED 1109.01 and CFR 300.320

CORRECTIVE ACTION: All IEPs will be reviewed and revised as required, involving parents and districts as appropriate. Professional Development for all

¹⁵⁷ Monarch School of New England, 2010/2011 Program Approval/Case Study review.

relevant staff will be provided to ensure development of measurable annual goals. Staff from all disciplines will be able to demonstrate how goals are measured and the impact on student learning.

PERSON(S) RESPONSIBLE: Special Education Administrator will work with staff to provide professional development.

EVIDENCE OF COMPLIANCE AND EVIDENCE OF IMPACT ON STUDENTS, AS APPROPRIATE: Upon review of all IEPs and progress reports, 100% of randomly selected IEPs will exhibit measurable annual goals. Staff will demonstrate knowledge and understanding of writing IEPs with measurable annual goals and be able to demonstrate knowledge of how they are being measured. Progress notes will clearly demonstrate student learning.

TIMELINE: 7/11

DATE OF FOLLOW UP VISIT (or date of acceptance of evidence submitted to indicate correction)...Note as Met, In Process or Not Met (Note: The corrective action plan provided by SERESC in April 2012 did not reflect any follow-up visits or the status of the corrective action.)

The corrective action is inadequate as it fails to clearly and completely specify who will do what, by when or the standards by which compliance will be measured. For example, "100% of randomly selected IEPs will exhibit measurable annual goals" is not the same construct as "all goals on 100% of randomly selected IEPs will be measurable": the language chosen for the corrective action would allow an IEP with *some* non-measurable goals to pass muster. It fails to specify such things as how many IEPs will be randomly selected, how staff will demonstrate "knowledge and understanding," when it would not be "appropriate" for parents and districts to be involved when IEPs are reviewed and revised, or how progress notes might be used to determine compliance with ED 1109.01 and 34 C.F.R. § 300.320.

Focused Monitoring Systemic Corrective Actions

The twelve FM Summary Reports for public school districts reviewed in 2009-2010 and 2010-2011 include a total of 46 systemic findings of noncompliance, ranging from one district with eight findings to one district with no findings.

The 46 findings of noncompliance may be grouped as follows:

- IEP Content (most frequently lack of measurable goals) (14)
- Transition Planning (most frequently lack of measurable transition goals) (12)
- IEP Team Composition (4)
- Placement in the LRE (2)

Individual areas of noncompliance (16) (e.g., “Evaluation Summaries” and “Graduation Credits”)

The twelve online FM Summary Reports reviewed by the evaluator included required corrective actions to address these findings. The most common finding of noncompliance in 2009-2010 and in 2010-2011 was lack of measurable IEP goals. Eleven of the twelve FM Summary Reports reviewed by the evaluator contained corrective actions to address the lack of measurable goals.

The second most common finding of noncompliance in 2009-2010 and in 2010-2011 was lack of required transition planning. Nine of the twelve FM Summary Reports reviewed by the evaluator contained corrective actions to address the noncompliance regarding transition planning. The following is a representative example excerpted from one of the reports¹⁵⁸:

FINDINGS OF NON-COMPLIANCE: Ed 1109.01/34 CFR 300.320: Measurable Goals. ED 1109.01 (a) (1) Transition CFR 300.320 For students 16 years and older, transition plans must include all required components. The one IEP reviewed for a student 16 and older did not include all IEP required components.

IMPROVEMENT ACTIVITY: Professional Development for all relevant staff will be provided to ensure that all Transition Plans include required components.

PERSON(S) RESPONSIBLE: Special Education Director will work with staff to coordinate professional development.

EVIDENCE OF COMPLIANCE AND EVIDENCE OF IMPACT ON STUDENTS, AS APPROPRIATE: Upon review of IEPs 100% of randomly selected transition plans will have all required components.

TIMELINE: 1/12

DATE OF FOLLOW UP VISIT or date of acceptance of evidence submitted to indicate correction...Note as Met, In Process or Not Met (Note: The corrective action plan posted on the NHDOE website does not reflect any follow-up visits or the status of the corrective action.)

The corrective action fails to specify whether IEP meetings will be reconvened for students, the timeline by which the professional development activity will be held,

¹⁵⁸ GRS Cooperative School District, FM Summary Report, June 2011, page 12.

or the standards by which compliance will be measured (the elements of transition plans that will be looked for).

The corrective action plans contained in PA and FM Summary Reports are inadequate. They are not reasonably calculated to result in compliance, as they do not consistently specify who will do what and when or the standards by which compliance will be measured. In some instances, the plan consists of little more than assurance that some action (*e.g.*, convening an IEP team meeting) will take place sometime in the future.

Timeliness of CAP Development

When interviewed by the evaluators, both SERESC and NHDOE personnel reported that systemic findings of noncompliance must be corrected within one year, and that child-specific findings of noncompliance must be corrected within 45 days. SERESC personnel pointed out that the 45-day timeline may be extended to 60 days "to allow for scheduling glitches, parent issues, etc."

The evaluators requested additional information regarding the time that elapses between findings of noncompliance and implementation of corrective action plans. SERESC provided the following response,

For public schools (Focused Monitoring):

Once the IEP review (special ed compliance) is conducted, the report is written. Both the Child-specific Findings of Non-compliance and the report go to the school district by approximately the 90 day mark. The report includes BOTH the child specific findings and the systemic findings. The LEA either validates the Child-specific findings or rebuts them. Assuming they are validated, the LEA returns the validated Findings to [SERESC] within 15 days and begins the corrective actions on the student IEPs immediately.

[Child specific] corrections need to be completed and Assurances submitted to [SERESC] within 45 days, but no longer than 60 days. Once the Assurances have been submitted to [SERESC], [SERESC] sends the Corrective Action template to the LEA. The Corrective Action Plan must be completed and submitted to [SERESC] within 15 days. Assuming it is approved, the LEA has one year from the date of the CAP to complete their systemic findings corrections. The NHDOE (FM) will conduct Corrective Action follow-up visits during that year.

For private schools (Program Approval):

The report of the PA visit and the Notice of Child-specific Findings go to the private school by approximately 90 days following the on-site visit. Once the

private school validates the Student-specific Findings within 15 days, the same Notice goes to the sending school district(s) responsible for each student. The LEA, in collaboration with the private school, is responsible for correcting the findings and submitting the Assurances to [SERESC], again within 45 days, but no longer than 60. Once the Assurances have been received, [SERESC] send[s] the Corrective Action Plan template to the private school which then has 15 days to complete and return the Plan. Assuming the Plan is approved, the private school has one year from the date of the CAP to correct the systemic findings. The NHDOE (PA) will conduct Corrective Action follow-up visits during that year.

Further, data sent to the evaluators by SERESC on 5/31/12 indicated that, for 2009-10 and 2010-11, across all 32 FM and PA reports with findings of noncompliance, the average number of days between the monitoring report and the receipt of the CAP from the district (which is not necessarily the approval date of the CAP) is 40.25. The number of days ranged from a high of 101 to a low of nine. In 2009-10, for the 21 FM and PA reports the average number of days between the monitoring report and the receipt of the CAP is 42.38. In 2010-11, for the 11 FM and PA reports with findings of noncompliance the average number of days between the monitoring report and the receipt of the CAP from the district is 36.18.

The current system in place raises two concerns. First, it does not require the development and approval of CAPs to address systemic noncompliance until 105 days or more after the initial identification of noncompliance during a FM or PA on-site visit; assuming at least 90 days for SERESC to provide notification of noncompliance and fifteen days for the LEA to develop a corrective action plan. Allowing three-and-one-half months for approval of the CAP is inconsistent with the mandate to correct noncompliance as soon as possible. Secondly, the system in place does not include a process by which proposed plans to remedy child-specific noncompliance are approved by SERESC or NHDOE before corrective actions are implemented by the LEA. It only includes after-the-fact review and approval of "assurances" that corrective actions have already been completed.

Tracking of CAP Implementation

The evaluators found no evidence of a thorough, consistent process for tracking the implementation of corrective action plans. For child-specific noncompliance at private schools and public schools, tracking is virtually nonexistent. For systemic noncompliance, both at private schools and public schools, tracking is haphazard, at best.

NHDOE and SERESC staff members were interviewed regarding required corrective actions. Interviewees outlined the following sequence of events that follow findings of child-specific noncompliance associated with PA and FM reviews. The steps outlined by NHDOE and SERESC staff during interviews with the evaluators

were corroborated by SERESC guidelines entitled "Steps for Student Specific Findings."

- a. SERESC notifies the local education agency (LEA) of findings of noncompliance, using the template titled "Record of Student Specific Findings."
- b. After any necessary corrections or modifications, the LEA validates the findings and submits a completed "Validation Form" to SERESC.
- c. The SERESC Technical Assistant (TA) provides the LEA with an "Assurance Form" to be completed by the LEA Director of Special Education.
- d. The LEA submits a completed "Assurance Form" to SERESC within 45 days, indicating what corrective actions have been taken to resolve each Finding of Child Level Noncompliance.
- e. SERESC reviews the completed Assurance Form and returns it to the LEA for revisions, if needed. Otherwise, SERESC forwards the Assurance Form to the NHDOE.
- f. NHDOE administration reviews the completed Assurance Form and returns it to the LEA for revisions, if needed. Otherwise, NHDOE notifies the LEA that "all areas of noncompliance have been corrected."

NHDOE and SERESC staff members were also asked a series of questions regarding corrective actions associated with systemic findings of noncompliance. Interviewees outlined the following sequence of events regarding systemic corrective actions:

- a. The SERESC Technical Assistant notifies the LEA of findings of noncompliance, using the template titled "Letter to LEA re: Findings of Noncompliance."
- c. The LEA validates the findings of noncompliance after an opportunity to "correct any inaccuracies."
- d. The LEA develops a draft CAP.
- e. SERESC administration reviews the draft CAP and returns it to the LEA for revisions, if needed.
- f. NHDOE administration reviews the draft CAP and returns it to the LEA for revisions, if needed. Otherwise, NHDOE notifies the LEA that the CAP is approved for implementation.

- g. The LEA implements the approved CAP.
- h. The SERESC Technical Assistant monitors implementation of the approved CAP.

When interviewed by the evaluators, SERESC personnel were asked whether SERESC had any responsibility for tracking the implementation of CAPs. Interviewees responded that SERESC "take[s] the lead" in monitoring implementation of CAPs.

The evaluators asked how often implementation/progress was tracked. One individual responded that "SERESC staff dipstick periodically" to make sure the CAPs are being implemented. Other respondents stated that on-site tracking occurs "three or four times a year, depending on the district," "quarterly," or "tertiary." Another respondent reported that, "SERESC staff check up on districts monthly to biannually [and might ask the LEA to] show us some of the P.D. you've done." Still another asserted that quarterly reports are submitted to SERESC administration for review, but did not elaborate on the form or substance of the reports.

SERESC's description of the process for monitoring systemic corrective actions raises at least two concerns regarding the frequency and intensity of follow-up tracking. First, the frequency of on-site visits might range from monthly to biannually. Conceivably, follow-up tracking could be limited to only one visit six months after the CAP is approved and one visit at the end of twelve months. Such infrequent tracking would be insufficient to ensure timely correction of noncompliance. Secondly, the intensity of tracking might be limited to incidental sampling, as in "dipstick periodically." Such a casual, informal approach to tracking is less likely to result in compliance and the provision of FAPE in the LRE.

The evaluators found no evidence that completion of child-specific corrective actions is closely and systematically tracked by SERESC or NHDOE. Findings of noncompliance are addressed through the use of the Assurance Form, which is designed to report what actions have been taken by an LEA to correct noncompliance. The Assurance Form must be completed and submitted to SERESC within 45 days. According to SERESC, there is no preapproval of the actions to be taken and there is no established system to track completion during the 45-day period, except for incidental spot-checking. As noted earlier in this section, Assurance Form corrective actions, in some instances, are simply statements that an IEP "will be corrected," or "is currently being newly developed."

Neither SERESC nor NHDOE provided evidence that completion of corrective actions is tracked thoroughly and systematically. Tracking of CAPs to resolve systemic noncompliance is not consistent or substantial. Tracking of child-specific Assurance Forms is minimal, at most.

Verification of the Performance of Corrective Actions

The processes used to verify completion of corrective actions are inadequate and unlikely to ensure the resolution of noncompliance consistently. The procedures applied to child-specific and systemic corrective actions raise multiple concerns.

Child Specific Corrective Actions

During the 45 days allotted to complete the corrective actions, SERESC may visit the LEA to check on progress and to offer technical assistance, if needed. SERESC reported that, once the LEA has submitted the completed Assurance Form, the SERESC TA assigned to the LEA reviews the form for completeness and determines whether the reported corrective actions are sufficient to resolve the child-specific findings. In only some instances SERESC may independently review the student's IEP file to verify compliance with the statutory requirement originally identified.

Unless SERESC orders revisions, the form is forwarded to NHDOE for review and approval through an NHDOE administrative desk audit. If no revisions are ordered, NHDOE issues notification that all areas of noncompliance have been corrected.

The SERESC verification process raises two serious concerns. First, some of the corrective actions entered on Assurance Forms cannot be verified as completed because they are written in terms of future activities (*e.g.*, "an IEP team meeting has been scheduled" and "training for all case managers has been scheduled"). It is impossible for SERESC to verify correction of noncompliance based upon an action that has not yet occurred. SERESC, nonetheless, accepts assurances that future activities will take place as evidence that noncompliance has already been resolved. Secondly, child-specific noncompliance must be corrected within 45 days. Merely receiving an Assurance Form within 45 days, whether or not corrective actions have actually been completed, is not sufficient to conclude that noncompliance has been corrected within the required timeline. It does not appear to be the case that the student's IEP is always checked by SERESC or NHDOE to ensure that correction has indeed taken place.

Systemic Corrective Actions

As noted earlier in this section, SERESC monitors the completion of systemic corrective actions for up to one year after approval of CAPs. As reported by SERESC personnel during interviews with the evaluators, a SERESC TA is assigned to each agency participating in either a FM or PA review and "stays with them for two years" until corrective actions have been completed. At the end of the second year, according to one respondent, the SERESC TA randomly samples "two to three files at each building" to verify compliance. The sample may or may not include the files first

tested during the original on-site visit. The expectation is that the sample files will be "100% compliant."

As it pertains to systemic noncompliance, the SERESC verification process is inadequate, as it is too narrow to address more than one type of corrective action. The current verification process, as described by SERESC, is based solely upon the review of student files. Some corrective actions, such as, "Staff will...be able to demonstrate knowledge of how [measurable goals] are being measured," cannot be assessed through a file review. They are more appropriately addressed through observations, interviews, or questionnaires, which are not components of the existing verification process.

NHDOE is notified once SERESC has completed its review and verification procedures. According to NHDOE and SERESC staff members interviewed by the evaluators, NHDOE also verifies compliance by sampling randomly selected student files in the LEA. Upon concluding that the sample files are acceptable, NHDOE issues a notice that "all areas of noncompliance have been corrected."

Verification of Correction of Noncompliance

87% of the surveyed districts that responded indicated that, prior to being released from findings of noncompliance, NHDOE or SERESC conducted another monitoring visit. Two districts (13%) said that the district self-monitored to determine whether noncompliance had been corrected.

Those districts that stated that NHDOE/SERESC did a follow-up visit were asked to describe how NHDOE/SERESC verified that the findings of noncompliance were adequately corrected within one year. Common themes included that a review of IEPs took place and that the district had to document the action steps they took to complete their CAP. Examples of responses include:

- "We continuously sent copies of corrected/amended IEPs via e-mail until we were free and clear. Follow up visits also took place in our district."
- "Very detailed documentation was required and then a visit was made on site to carefully go through each of the findings and corresponding documentation."
- "By visits with SERESC – review of child-specific IEPs and review of newly written random-sample IEPs."
- "We defined the noncompliance findings in measureable terms, then collected data on the areas of noncompliance over the year and were able to show improvement in all cited areas."

In the first month of this evaluation the evaluators requested copies of all follow-up monitoring reports.¹⁵⁹ The email explained that all the reports that were

¹⁵⁹ Susan Wagner email to McKenzie Harrington, October 3, 2011.

needed were not found at the link NHDOE had previously sent. The next day NHDOE responded: "...the monitoring/CAPs documents that you are looking for are also maintained in the same server as the district data profile information and cannot be accessed at this moment either. When that access is restored I will begin sending you the requested information. Sorry for the delay."¹⁶⁰ However, follow-up monitoring reports were not received from NHDOE, and were not found at any of the web links provided by NHDOE.

After the review of initial monitoring reports and CAPs was concluded, the evaluators again requested the follow-up reports: "Thus far we have been unable to locate FM and PA follow-up monitoring reports in any of the links and documents you have sent over time. We'll need all follow-up monitoring reports from 2007-08 on. Please let me know where we can find these documents. Thanks in advance."¹⁶¹

The next day NHDOE responded: "I am not sure what 'unable to locate FM and PA follow-up monitoring reports' means. During the first month of the project, McKenzie provided you with all the requested documents. I know that there were also additional requests for data and documents that McKenzie has responded to."¹⁶² The email sent again the same link that had been previously sent.

The evaluators responded later that same day, writing:

We have looked through the documents linked to at that site. We do not see follow-up monitoring reports, which may well be in the form of what some states call "closure letters." By "follow-up monitoring reports," we mean reports or other forms of communication that communicate the results of follow-up monitoring activities to determine whether noncompliance, both individual and systemic, has been corrected within one year. Such documents typically also contain information related to the process used (how students were chosen to be sampled, how many students were reviewed, and the monitoring activities undertaken). It's clear from the SEREC (sic) annual reports that follow-up monitoring activities of some sort take place, but what we need to see are the documents that underlie, set forth, and explain that process.

I hope this clarifies what we need. I apologize in advance if we have somehow missed the documents at that link, but we simply don't see them there.¹⁶³

The evaluators did not receive a response to that email and, thus, cannot evaluate the process of verification of noncompliance from the actual documents themselves.

In the most recent APR, NHDOE wrote regarding its process of verifying the correction of noncompliance:

¹⁶⁰ McKenzie Harrington email to Susan Wagner, October 4, 2011.

¹⁶¹ Mark Mlawer email to McKenzie Harrington, March, 29, 2012.

¹⁶² Santina Thibedeau email to Mark Mlawer, March 30, 2012.

¹⁶³ Mark Mlawer email to Santina Thibedeau, March 30, 2012.

For the 196 findings identified in 2009-2010 the NHDOE used the following process to verify correction as soon as possible but no later than one year from identification. The State verified the correction of the noncompliance either through onsite visit and file review and/or through a NHDOE desk audit monitoring review of district submitted written documentation of the correction of the noncompliance. The NHDOE verified correction of noncompliance to ensure that the LEA had corrected each individual case of noncompliance, unless the child was no longer in the jurisdiction of the LEA. Specifically, the NHDOE reviewed files for correction or required LEAs to submit data demonstrating individual correction.

In addition, the NHDOE verified that the LEA was correctly implementing the specific regulatory requirements related to the findings through the review of subsequent data demonstrating 100% compliance. The verification was accomplished through an onsite monitoring visit with a review of a representative selection of student files, policies and procedures and other evidence to ensure that the LEA is implementing the specific regulatory requirements. When the NHDOE completes a file review, the NHDOE files (sic) a representative selection of student files to ensure confidence that the LEA has implemented the regulations with 100% compliance.¹⁶⁴

However, as shown above, it is not clear that the verification process ensures that both students who were part of the original finding, and students who were not, are reviewed during the process of verification of correction of noncompliance identified through the FM and PA processes.

Correction of Indicator-Specific Noncompliance

In addition to the procedures described above, the state also follows specific procedures to ensure timely correction of indicator-specific noncompliance (findings based upon reviews of data related to particular SPP indicators). Below is a discussion of specific indicators and the various ways in which the state handles its responsibility to verify correction of each finding within one year.

Indicator 11

Regarding the correction of Indicator 11 noncompliance, NHDOE wrote in the most recent APR:

¹⁶⁴ FFY 2010 APR, pp. 99-100.

(1) The NHDOE verified that each district was correctly implementing 34 CFR §300.124(b), (i.e., achieved 100% compliance) based on a review of data subsequently collected through a desk audit monitoring process. During the correction period, the NHDOE reviewed local policies and procedures and supported districts with accurate data collection and entry in order to ensure districts were providing timely evaluations.

(2) Prior to issuing written findings of noncompliance, the NHDOE, through a data review, verified that each district had completed the evaluation, although late, for any child whose initial evaluation was not timely, unless the child was no longer within the jurisdiction of the LEA. Therefore, the NHDOE has verified that, for each of these individual cases, the district had completed the required action, although late, unless the child was no longer within the jurisdiction of the LEA, prior to the identification of findings, as reported in the FFY 2009 APR.¹⁶⁵

Assuming the steps described at (1) in this excerpt include the review of data concerning other students not part of the original finding, this process would be adequate to ensure that initial evaluations are timely.

Indicator 12

NHDOE wrote in the most recent APR,

(1) The NHDOE verified that each district was correctly implementing 34 CFR §300.124(b), (i.e., achieved 100% compliance) based on a review of data subsequently collected through a desk audit monitoring process. During the correction period, SSECT reviewed local policies and procedures and supported districts with accurate data collection and entry in order to ensure districts were providing timely and quality transitions.

(2) Prior to issuing written findings of noncompliance, the NHDOE, through a data review, verified that each district had developed and implemented the IEP, although late, for any child for whom implementation of the IEP was not timely, unless the child was no longer within the jurisdiction of the LEA. Therefore, the NHDOE has verified that, for each of these individual cases, the district had completed the required action, although late, unless the child was no longer within the jurisdiction of the LEA, prior to the identification of findings, as reported in the FFY 2009 APR.¹⁶⁶

¹⁶⁵ FFY '10 APR, p. 66.

¹⁶⁶ FFY '10 APR, p. 73.

Additionally, the sample letter for Indicator 12 noncompliance states that, "NHDOE has verified correction of each child-specific instance of noncompliance because, in each case, the district determined eligibility and/or developed and implemented the IEP, though late, for all children who transitioned from ESS unless the child was no longer within the jurisdiction of the LEA."¹⁶⁷ The instructions enclosed with the letter tell LEAs that, in order to demonstrate compliance with Indicator 12, the districts found in noncompliance must submit data for all transitioning children from part C for the period July-October 2011.

Again assuming that the steps described at (1) in the APR quotation above include the review of data concerning other students not part of the original finding, this process would be adequate to ensure that transitions from part C are timely.

However, one aspect of the instructions included with the letter is puzzling. It appears that the requirement of submitting data for the period July-October for districts found noncompliant is the same as the Indicator 12 process for all districts. It would be reasonable, however, to require data from noncompliant districts for the full school year.

Indicator 13

With respect to correction of identified noncompliance, according to the SPP,

The NHDOE verifies that districts with findings of noncompliance are implementing the regulations of IDEA related to this requirement as soon as possible but in no case more than one year from identification. This verification is based on a review of updated data (reviewing student files for students who had new transition plans following the identification of noncompliance) collected through the onsite monitoring that must show 100% compliance.

The NHDOE verifies that each individual case of child specific noncompliance that is not subject to a specific timeline requirement has subsequently been corrected as soon as possible. This is done through a review process that allows the NHDOE to be confident that, based on the files reviewed, all noncompliance has been corrected. This may mean that some or all files are reviewed, providing there are sufficient files reviewed to ensure confidence that all issues of individual noncompliance have been corrected. The NHDOE makes it very clear that the district needs to correct all instances of noncompliance unless the child has left the jurisdiction of the LEA.¹⁶⁸

¹⁶⁷ LETTER 09-10 APR noncompliance notification, p. 2.

¹⁶⁸ 2012 SPP, p. 76.

Thus, NHDOE verifies the correction of noncompliance through both reviewing files of students who had transition plans developed after the findings of noncompliance were made, and also by reviewing some or all of the original files that were sources of findings of noncompliance to ensure that the transition plans of those students were corrected. It is unclear what standard is used to determine how many files, or what percentage of files, must be reviewed in order to conclude that the number is "sufficient" to instill "confidence" that all instances of noncompliance were corrected.

The current APR adds the following details with respect to the 2010-2011 review of findings made during the 2009-2010 school year, using the FM process to conduct the review:

Specifically, districts with child-specific noncompliance provided the FM team with documentation (meeting minutes and the individual child's updated IEP) within 60 days of the identification of the finding to determine if the individual case of noncompliance was corrected, unless the child was no longer within the jurisdiction of the LEA. The FM team also conducted a follow up onsite visit to each district with a finding of noncompliance to review subsequent data (student files) to ensure that the LEA was correctly implementing the IDEA regulations related to this indicator. In each of the 19 instances of child-specific noncompliance, the evidence reviewed was verified by the NHDOE to be corrected. After the child-specific noncompliance had been verified to be corrected, the NHDOE, through the FM process, reviewed other student's IEPs to ensure that the districts where noncompliance had been found were correctly implementing IDEA regulations. The NHDOE found no more instances of noncompliance in the second review of sample IEPs in the districts where the original child-specific noncompliance had been found.¹⁶⁹

The number of IEPs of other students that were reviewed to ensure that noncompliant districts are correctly implementing the requirements is not specified in the APR. That issue aside, the process appears adequate.

¹⁶⁹ FFY '10 APR, pp. 78-79.

Section VI

Are enforcement steps taken when necessary? If so, are those steps adequate to resolve the identified noncompliance in a timely and effective manner?

State statute and regulations give NHDOE many tools it can use to enforce compliance when necessary. When the time period for implementing corrective actions has concluded, the Bureau of Special Education is to forward a written report to the Commissioner "indicating whether the issues have been resolved, and if not the extent to which the agency had taken corrective action to achieve compliance...."¹⁷⁰ If compliance has not been achieved, the Commissioner "shall" provide written notice "of the further enforcement action to be taken."¹⁷¹ Thus, further enforcement steps are required under such circumstances.

However, the nature of the steps to be taken is to be influenced by four factors the Commissioner is required to consider:

- severity, length, and/or repetitive nature "of the same or other noncompliance";
- whether a "good faith effort" was made to correct the noncompliance;
- the impact on students entitled to FAPE; and
- whether the noncompliance is individual or systemic.¹⁷²

Both the statute and regulations include lists of potential enforcement steps available to NHDOE, steps that are not fully inclusive ("shall include but not be limited to"). Several interesting differences between the statutory and regulatory language are set forth in footnotes below. Enforcement steps include, but are not limited to:

- CAP development, implementation, and monitoring;
- voluntary and mandatory TA;
- mandatory, targeted PD;
- directives ordering specific actions¹⁷³;
- targeting/ directing use of federal funds to area of concern;
- formal referral to the Bureau of Credentialing;
- ordering the cessation of operations of specific programs;

¹⁷⁰ Ed 1125.02 (b); see also 186-C:5 (V) (b)

¹⁷¹ Ed 1125.02 (c); 186-C:5 (V) (c)

¹⁷² Ed 1125.02 (d); see also 186-C:5 (d), which does not include the language regarding the "repetitive nature of the same or other noncompliance."

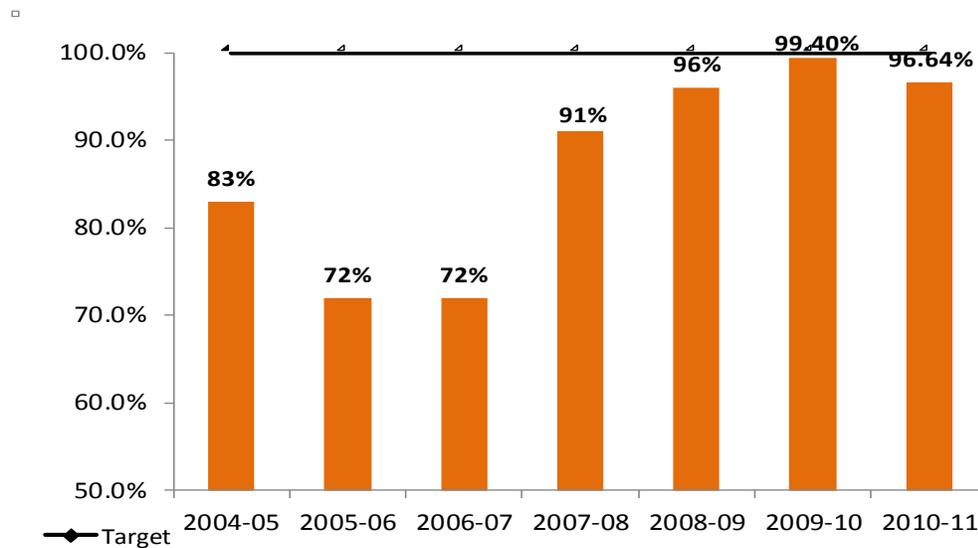
¹⁷³ The statute adds "including compensatory education" (186-C:5 (V) (e) (4)); the regulations add instead "including but not limited to withdrawing program approval, pending an appeal" (Ed 1125.02 (e) (4)).

- redirecting federal funds to remediate noncompliance of over one year's duration;
- halting payments of state or federal funds¹⁷⁴;
- order, in accordance with an audit determination, repayment of funds;
- for public agencies, referral to the Department of Justice;
- for private providers or non-LEA programs, ordering districts with students placed there to relocate them to programs that are in compliance; and
- a review of programs to include¹⁷⁵ desk audits, or scheduled or unannounced reviews, with the frequency at the discretion of NHDOE.¹⁷⁶

The agency subject to enforcement actions may appeal.¹⁷⁷

Display VI-1: Indicator 15 Correction of Noncompliance within One Year

Indicator	2004-05 Rate	2005-06 Rate	2006-07 Rate	2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate
15 Correction of Noncompliance	83%	72%	72%	91%	96%	99.40%	96.64%



As the data above show, NHDOE has improved since the 2004-05 school year at ensuring the correction of identified noncompliance within one year.

¹⁷⁴ The statute adds "until the department of education determines the school district or other public agency is in compliance" (186-C:5 (V) (e) (10)); the regulations add instead "until the department determines that there is no longer any failure to comply with the orders" (Ed 1125.02 (e) (9)).

¹⁷⁵ The statute states that the review "may" include (186-C:5 (V) (e) (8)); the regulations read "shall" include (Ed 1125.02 (f)).

¹⁷⁶ 186-C:5 (V) (e); Ed 1125.02 (e)-(g)

¹⁷⁷ Ed 1125.03

In a conference call with NHDOE staff on January 3, 2012, the evaluators requested copies of documents related to enforcement actions discussed in NHDOE APR documents. No such documents were provided. Without a full set of such documents the evaluators could only describe NHDOE enforcement actions based on interviews and APR documents. However, the Disabilities Rights Center submitted comments on the monitoring process as part of the evaluators' interview process, and attached to the comments were copies of some NHDOE and SERESC documents related to enforcement activities in particular districts. Although the evaluators do not know whether these are complete sets of enforcement documents concerning these districts, the documents were used as necessary in the analysis below.

In 2006, NHDOE reported to OSEP its intention "to initiate enforcement procedures with an increased focus on sanctions that included possible involvement of the Commissioner of Education and incentives for improved results."¹⁷⁸

With respect to noncompliance that was not corrected within one year, NHDOE wrote the following in its FFY 2009 APR:

For the one district who had noncompliance identified in 2006-2007, the NHDOE had taken the following actions: The NHDOE, with the district, has investigated the root cause of the continuing noncompliance which included a need for district-wide training on the implementation of the regulations. The district sought technical assistance from other sources in addition to technical assistance provided by the NHDOE. Enforcement actions include directing a percentage of the district's 2010-2011 federal funds to be targeted to correct the area of noncompliance. The NHDOE has been closely monitoring the correction of noncompliance through on site visits and quarterly progress reports. The lack of correction has factored in their determination of implementation of IDEA. This area of noncompliance has been corrected as of the reporting of this APR.¹⁷⁹

One year later NHDOE wrote:

For the three findings of noncompliance that were not timely corrected, the NHDOE implemented enforcement actions and additional focused technical assistance. This included onsite monitoring with technical assistance by focused monitoring staff and teleconferences with NHDOE personnel. Noncompliance was corrected prior to the need to redirect or withhold funds.

Following those activities, the NHDOE verified that the LEAs were correctly implementing the specific regulatory requirements consistent with OSEP memo 09-02 as described above. The NHDOE verified

¹⁷⁸ OSEP verification visit letter, 10/3/06, p. 3.

¹⁷⁹ FFY '09 APR, p. 77.

correction in accordance with OSEP Memo 09-02 (including individual correction and review of subsequent data) for the remaining 3 findings of noncompliance.¹⁸⁰

When interviewed regarding LEA failures to correct noncompliance within one year, four of the eight NHDOE staff members interviewed offered responses. Staff members reported that, if a district fails to clear noncompliance within one year, NHDOE "may redirect funds, as cited in our SPP." Compliance status is noted in a "district determination letter [as] anything from *Meets Requirements* to *Needs Substantial Assistance* (sic)." Another noted, "Our APR says, 'One district, [name of district], *Needs Substantial Assistance* (sic).' Funds were redirected." Another staff member reported that two districts have failed to complete corrective actions within one year but was unsure which districts these are. The same interviewee noted that funds could be redirected and that technical assistance could be mandated because of failure to correct either child-specific or systemic noncompliance.

One staff member noted that there are different timelines for systemic and child-specific noncompliance: "It says 'ASAP' in IDEA. Systemic can take up to a year. Student-level [noncompliance] gets sixty days." One staff member reported that "DOE or SERESC re-monitors until the district is 100%."

In order to learn more about the state's use of enforcement actions, evaluators reviewed several documents related to a district that received a determination of *Needs Substantial Intervention*. The determination letter and accompanying documentation indicate that the district received that determination due to a failure to report data for two indicators (7 and 12) and for federal tables related to Maintenance of Effort (MOE) and Coordinated Early Intervening Services (CEIS).

The federal regulations require NHDOE to take one of the following enforcement actions as a result of a *Needs Substantial Intervention* determination: recovery of funds, withholding of funds in whole or in part, referring the case to the Inspector General, or referring "the matter for appropriate enforcement action, which may include referral to the Department of Justice."¹⁸¹ However, after listing these options, NHDOE's letter sets forth the following as its "appropriate enforcement action": within approximately forty days from the August 31, 2011 date of the letter, "...the district must provide the NHDOE, Bureau of Special Education with a plan to remedy the areas of concern identified in the rubric." After approval of the plan by NHDOE, progress reports every two months are also required.

While NHDOE was not required by the statute to use a rubric that resulted in a *Needs Substantial Intervention* for that district, once that determination was made, it is difficult to regard the development and implementation of a plan as an appropriate enforcement action (especially given the federal requirements noted in the preceding paragraph). Moreover, Indicator 12 concerns all eligible children having an IEP in

¹⁸⁰ FFY '10 APR, p. 100.

¹⁸¹ § 300.603 (c)

place by their third birthday: these data were apparently not reported by the district, yet the NHDOE documents do not indicate that any immediate steps were taken to ensure that there were no such children without IEPs in place while awaiting the district's plan.

In another case, a district was originally monitored in April 2008 and notified of the findings of noncompliance in June of that year, according to a December 2009 letter from NHDOE to the district. The letter includes a list of regulations with which the district was still noncompliant, references "onsite visits" during "the last several months," correspondence sent to the district, and offers of technical assistance made to the district. The letter does not include any monitoring data from the on-site visits, nor does it mention whether any technical assistance was delivered. It closes by setting forth a deadline of March 1, 2010 for compliance to be achieved (as verified by the monitoring team) and indicates that an enforcement action of redirection of funds would be taken if compliance was not achieved by the deadline imposed by NHDOE.

The correspondence does not indicate what steps, if any, were taken in June of 2009, one year after the original notification of the findings of noncompliance. Nor is it clear why the state made *offers* of technical assistance--instead of mandating technical assistance--eighteen months after the original findings of noncompliance were identified.

SERESC's February 2010 letter to the district contains the results of a follow-up visit to the district conducted earlier that month. Three of the five remaining findings of noncompliance were regarded by SERESC as "met" as a result of that visit. For two of these (both were IEP violations), the result was based on a review of randomly selected IEPs; the number of IEPs reviewed to clear these findings is not mentioned in the letter, nor is it clear from the letter that both prongs of OSEP Memo 09-02 were addressed (reviewing both students whose IEPs were found noncompliant in the original visit, and students whose IEPs were not reviewed during the original visit).

For the third violation regarded as cleared as a result of this visit (special education process), the stated reasons for clearing the finding include: policies and procedures were revised, building-level checklists to monitor compliance were "developed and are fully implemented," central office developed "consistent mechanisms" to monitor compliance, and review of NHSEIS compliance reports "demonstrate a significant improvement in compliance rates." However, no indication is given in the letter that the revised policies and procedures were reviewed to ensure compliance with state and federal requirements, nor is it clear how the monitors reached the conclusion that the checklists were "fully implemented" in a one-day visit to the district. Along the same lines, it is unstated what the "consistent mechanisms" for central office monitoring of compliance are, or how the monitors reached the conclusion that these mechanisms were being implemented. Finally, a "significant improvement" in compliance rates is certainly a positive development, but as IDEA requires full compliance, it is unclear why the finding was cleared under what may have been circumstances of less than full compliance.

For one of the two findings that was not cleared, a host of remaining concerns

are set forth in the letter. The finding was in the area of curricula, and the reasons for continuing the finding include:

- lack of full access to the general curriculum,
- little time for collaboration between general and special education staff,
- no interaction with typical peers for academics, specials, or social time,
- services in IEPs not implemented as outlined,
- not clear that instruction delivered by teachers who are highly qualified, and
- reading interventions available to typical students not available to students with disabilities.

It appears from the discussion in the SERESC letter that several of these concerns go beyond the original finding in the area of curricula: a lack of interaction with typical peers indicates a potential LRE violation, and services not being delivered as outlined in IEPs may amount to a service delivery violation. Yet no additional findings were made, and no indication is given in the letter that these issues would be investigated further.

Several weeks later NHDOE directed the district by letter that 6% of its 2010-2011 IDEA Part B grant must be used to correct the two issues of outstanding noncompliance. The letter repeats the assertion in the prior letter from NHDOE that technical assistance had been offered to the district, but again mandatory technical assistance is not called for by the letter. Further, it is unclear how NHDOE came to the 6% figure, nor is the practical effect of the redirection of funds clear (from where are the funds being redirected and toward what required activities, staff, etc.).

In both of these districts' cases, it is unclear from the correspondence reviewed that the four factors state regulations require NHDOE to consider when selecting enforcement action (severity, length, and/or repetitive nature "of the same or other noncompliance," whether a "good faith effort" was made to correct the noncompliance, the impact on students entitled to FAPE, and whether the noncompliance is individual or systemic) were in fact considered and, if so, to what extent.

Section VII

What is the Department's process for making annual determinations of public agencies responsible for delivering special education services? What standards are used? To what extent do the standards used comport with the requirements of the IDEA?

Standards and Process

For FFY 2009, the NHDOE considered certain SPP compliance indicators, the timeliness and accuracy of data related to one results indicator (Indicator 7), findings of noncompliance, timeliness and accuracy of Table 8 data, and fiscal management when making district determinations. Concerning the SPP compliance indicators, the NHDOE used all of these indicators except Indicator 13.¹⁸² Regarding Indicator 7, it is worth noting that districts' levels of performance were not considered in the determinations formula; only the timeliness and accuracy of these data factored into the formula.

In a letter sent to districts regarding the determinations process, the NHDOE explained the factors considered in its FFY 2009 formula:

- 1) **State Performance Plan Indicator 4A:** The district does not have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs. Data were timely and accurate.
- 2) **State Performance Plan Indicator 9:** The district does not have a disproportionate representation of racial ethnic groups in special education and related services that is a result of inappropriate identification. Data were timely and accurate.
- 3) **State Performance Plan Indicator 10:** The district does not have a disproportionate representation, by disability category, of racial ethnic groups in special education and related services that is a result of inappropriate identification. Data were timely and accurate.
- 4) **State Performance Plan Indicator 11:** Initial evaluations for special education are completed within state established timelines. Data were timely and accurate.
- 5) **State Performance Plan Indicator 12:** Children referred from Family-Centered Early Supports & Services to special education have a determination of eligibility prior to the third birthday. Children who were found eligible have an IEP developed and implemented (signed by the parent) on or before the third birthday. Data were timely and accurate.

¹⁸² This may be due to the fact that only nineteen files were reviewed statewide for Indicator 13 purposes during FFY 2009.

- 6) **State Performance Plan Indicator 15:** General Supervision findings of noncompliance identified in 2008-2009 through monitoring, complaints and due process hearings are corrected within required timelines.
- 7) **State Performance Plan Indicator 7:** Preschool special education child progress data were timely and accurate.
- 8) **MOE: Federal Table 8.** Data were timely and accurate.
- 9) **CEIS: Federal Table 8.** Data were timely and accurate.
- 10) **Audit:** Audit findings regarding special education funds are corrected within timelines.
- 11) **IDEA Grant Management:** The district completes reporting for IDEA funds within timelines.¹⁸³

If a district “misses” any criteria (e.g., district does not provide data on time, does not have 95-100% compliance on Indicators 11 or 12, does not provide any data for an indicator), then the district is penalized a point. In order to be placed in the *Meet Requirements* determinations category, a district cannot have been penalized more than two points.

According to a memo to the evaluators from the Disabilities Rights Center, Inc., it was noted that ten New Hampshire districts were in *Needs Assistance* for the third or fourth consecutive year, no districts were in *Needs Intervention*, and one district was in *Needs Substantial Intervention* based on the state’s determinations for FFY 2009.¹⁸⁴

Comportment with IDEA Requirements

SEAs are required to make determinations annually regarding the "performance" of each LEA using the categories for doing so specified in the regulations.¹⁸⁵ Determinations should be based on information in the APR, information gained through monitoring visits, and any other available information.¹⁸⁶ Neither the statute nor the regulations make a distinction between performance and compliance indicators in this regard. Indeed, in its requirements for analysis of, and annual reporting on, the "performance" of each LEA, states are specifically required to "use the targets established in the State's performance plan" and the "priority areas" for monitoring in order to do so.¹⁸⁷ As noted in Section I above, those priority areas are: provision of FAPE in the least restrictive environment; state exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services; and disproportionate representation of racial and ethnic groups in special education and related services, to the extent the

¹⁸³ Determination of NH District Implementation of IDEA, July 26, 2011:

http://www.education.nh.gov/instruction/special_ed/districtdeterminations.htm.

¹⁸⁴ Findings from 91-A Document Review (February 10, 2012), Karen R. and Ashley K.

¹⁸⁵ 34 C.F.R. § 300.600

¹⁸⁶ 34 C.F.R. § 300.603

¹⁸⁷ 34 C.F.R. § 300.602

representation is the result of inappropriate identification.¹⁸⁸ However, NHDOE does not use indicators related to FAPE (such as 1, 2, 3C), the indicator related to LRE (5), or the indicator related to secondary transition (13) in order to make its local education agency determinations.

The current NHDOE approach to determinations would also appear to conflict with the spirit and the letter of the state statute. As noted in Section I above, the statute describes the very purpose of program approval and monitoring as compliance with applicable state and federal law "*including standards related to improving educational results and functional outcomes.*"¹⁸⁹ Further, the standards and procedures that are developed and applied to determine compliance with legal requirements "shall give *considerable weight* to *rigorous* benchmarks or performance outcomes and indicators" that are "*most relevant to achieving educational results and functional outcomes.*"¹⁹⁰ Both the state and federal statutes stress the importance of student results and outcomes, but data related to them are not used by NHDOE in its local determinations, one of the primary IDEA vehicles for enforcement actions. Thus, enforcement actions in NH are not likely to be related to important measures of student results and outcomes and delivery of FAPE in the LRE.

Moreover, the state statute appears to require a different approach to determinations from that currently used. As stated above, the standards that are developed to determine compliance must give considerable weight to benchmarks or performance outcomes and indicators most relevant to the achievement of results and outcomes; these benchmarks, outcomes and indicators must also be "rigorous." The statute requires reporting of outcome or indicator data by school districts, and then "[d]eterminations" by NHDOE "as to whether the reported data complies with such standards."¹⁹¹ While the evaluators cannot determine whether the statute is referring specifically to the IDEA-required determinations, it is clear at minimum that the latter would be a sound vehicle for determining the extent to which LEA-reported data complies with the standards.

When asked in an April 2012 phone conversation about the state's rationale for excluding performance indicators from the district determinations process, NHDOE personnel offered a number of reasons. Those rationales and the evaluators' comments regarding them are displayed in the table below:

NHDOE Rationale	Evaluators' Comments
Indicator 3B (participation on statewide tests) and Indicator 3C (proficiency on statewide tests) data are not included because districts are already held	Congress saw fit to emphasize statewide assessment participation and proficiency rates as important measures in both NCLB and IDEA. It makes sense that SEA special education procedures and practices would

¹⁸⁸ 34 C.F.R. § 300.600

¹⁸⁹ 186-C:5 (II); emphasis added.

¹⁹⁰ 186-C:5 (III); emphasis added.

¹⁹¹ 186-C:5 (III) (a) and (c).

NHDOE Rationale	Evaluators' Comments
<p>accountable for performance on these indicators via No Child Left Behind (NCLB) and Adequate Yearly Progress (AYP).</p>	<p>also reflect this emphasis. In addition, this is the only SPP indicator that provides any insight into the academic performance of students with disabilities prior to exiting the public education system, and is thus very important in light of the purpose of the IDEA. Ideally, states' LEA determinations should reflect the purposes of the statute.</p> <p>The evaluators agree with respect to AYP, as problems in this area should be addressed through NCLB school improvement, hopefully in coordination with IDEA personnel.</p>
<p>For several performance indicators, such as Indicator 1 (graduation) and Indicator 2 (drop-out), the minimum <i>n</i> size is not met. The bureau does not want to use data points based on small numbers and if the minimum <i>n</i> size is not met, the data cannot be publicly reported.</p>	<p>The evaluators agree that small districts with very small numbers of students in the graduation cohort make using these indicators problematic. However, an alternative to excluding these indicators from the determinations process would be that if the minimum <i>n</i> size is not met in a particular district, the indicator(s) could simply be removed from the determinations formula (for that district). The overall state rate could be substituted, a cohort rate could be substituted, or other options could be considered as well to avoid excluding the indicator(s) all together. Exclusion of these indicators may mask some significant outcomes problems in certain medium to large districts.</p> <p>While the evaluators can understand wanting to report the data publicly, there is no requirement that LEA determinations be publically reported.</p>
<p>For Indicator 7 (preschool outcomes), data are available only for students with disabilities. The Bureau does not want to use indicators when comparable "typical" student</p>	<p>It is important to note that there are no "typical" student data for Indicators 9, 10, 11, 12, or 15. However, all of these indicators <i>are</i> used by NHDOE in its determinations.</p> <p>See comment above regarding <i>n</i> sizes.</p>

NHDOE Rationale	Evaluators' Comments
<p>data are not available. Furthermore, Indicator 7 data usually does not meet the minimum <i>n</i> size at the district level.</p>	
<p>Indicator 5 (LRE) data are not used because it is not necessarily the case that all students with disabilities should be in the regular classroom; a higher Indicator 5A percent at one district is not necessarily better than a lower Indicator 5A percent at another district given the individual needs of the districts' students.</p>	<p>LRE is one of the foundational substantive requirements of the Act. The use of Indicator 5 data in determinations would not imply that all students with disabilities should be in regular classrooms (and the state's SPP targets for this indicator demonstrate that this is not NHDOE's expectation). In order to measure the extent to which states are delivering FAPE in settings that are regarded by LEAs as the LRE for individual students, USDOE requires states to measure placement not only in regular education environments (Indicator 5A) but separate classrooms (Indicator 5B) and separate facilities (Indicator 5C) as well. NHDOE's annual improvement targets for each of these LRE sub-indicators demonstrate that improvement in this area is desirable.</p> <p>There are many ways the state could use Indicator 5 data in determinations that would incentivize a reasonable range of placement patterns (based upon state averages, for example) and disincentivize negative placement patterns. Moreover, NHDOE's apparent belief that the "the individual needs of the districts' students" are driving placement decisions is a notion that cannot be supported objectively at the present time due to the lack of meaningful LRE examination in the state's current monitoring system (as shown in earlier sections of this report).</p>

It must also be emphasized, however, that USDOE also does not currently use performance indicators in its determinations of states, nor does it require states to do so in their local determinations. As OSEP put this point in 2010, "The State's annual

determinations process, must, *at a minimum*, consider: (1) an LEA's performance on all SPP/APR *compliance* indicators..."¹⁹²

However, OSEP itself now recognizes the conflicts between the statutory requirements and its current approach to determinations, and is in the process of moving away from the latter. OSEP wrote recently:

The current system places heavy emphasis on procedural compliance without consideration of how the requirements impact student learning outcomes. *In order to fulfill the IDEA's requirements, a more balanced approach to determining program effectiveness in special education is necessary. ...The Department is required to annually make determinations of each State's performance status using data from the APR and other publicly available data. The designation "meets requirements" should acknowledge a State's effectiveness in improving outcomes for children with disabilities relative to other states and to the nation. Determinations under RDA will be based on States' overall performance on a set of priority indicators and other relevant data rather than only on compliance indicators.*¹⁹³

Further, at least eleven states appear to already use performance measures in making their LEA determinations.¹⁹⁴ The statute requires it, as argued above; USDOE is moving in that direction; and states would also be wise to do so.

¹⁹² OSEP 2009 verification visit letter enclosure, January 15, 2010, p. 8; emphasis added.

¹⁹³ OSEP, Results-Driven Accountability in Special Education, Summary, April 5, 2012, pp. 1-2; emphasis added: <http://www2.ed.gov/about/offices/list/osers/osep/rda-summary.pdf>.

¹⁹⁴ <http://projectforum.org/docs/DeterminationsofLEACompliancewithIDEA-StrategiesandResourcesUsedbyStates.pdf>, pp. 2-3.

Section VIII

Do statewide data show changes over time on performance and compliance indicators? Is there evidence that indicates that the monitoring and program approval processes are having a positive effect on student results/outcomes and on compliance with the program requirements? Does the state have an adequate system for verifying the accuracy of data?

SPP Indicators: State Results Over Time

Display VIII-1 shows the statewide results on the SPP indicators 1-14 and 20 from 2007-08 through 2010-11. Since 2007-08, the state has improved on these indicators:

- Indicator 1 Graduation
- Indicator 2 Drop-out
- Indicator 3B Participation for Reading and Math
- Indicator 3C Proficiency for Reading and Math
- Indicator 4A and 4B Suspension/Expulsion
- Indicator 5A, 5B, and 5C LRE
- Indicator 7A1 Positive Social-Emotional growth (from 2008-09 to 2010-11)
- Indicator 7B1 Knowledge and Skills growth (from 2008-09 to 2010-11)
- Indicator 8 Parent Involvement
- Indicator 9 and 10 Disproportionate Representation (maintained a 0% score)
- Indicator 11 Timely Evaluations
- Indicator 12 Transition from Part C to Part B
- Indicator 14 Post-secondary outcomes (from 2009-10 to 2010-11)

Since 2007-08 or 2008-09, the state has regressed on these indicators:

- Indicator 13 Transition Planning on IEP by Age 16
- Indicator 7A2 Positive Social-Emotional functioning at age level (from 2008-09 to 2010-11)
- Indicator 7B2 Knowledge and Skills functioning at age level (from 2008-09 to 2010-11)
- Indicator 7C1 Using appropriate behaviors growth and functioning at age level (from 2008-09 to 2010-11)
- Indicator 7C2 Using appropriate behaviors functioning at age level (from 2008-09 to 2010-11)

Display VIII-1: State Rates Over Time

Indicator		2007-08 Rate	2008-09 Rate	2009-10 Rate	2010-11 Rate	2010-11 Rate minus 2007-08 Rate*	Improvement?
1	Graduation Rate	70.93%	71.00%	91.11%	71.56%	0.63	Yes
2	Drop Out Rate	3.86%	4.53%	2.30%	0.67%	-3.19	Yes
3A	Statewide Assessment	35.29%	33.58%	24.63%	28.47%	-6.82	No
3B	Participation Rate Reading	97.81%	98.21%	97.71%	98.51%	0.70	Yes
3B	Participation Rate Math	97.62%	97.94%	97.81%	98.41%	0.79	Yes
3C	Proficiency Rate Reading	31.88%	35.18%	38.45%	37.33%	5.45	Yes
3C	Proficiency Rate Math	26.93%	29.22%	33.96%	31.46%	4.53	Yes
4A	Suspension/ Expulsion Rate, Overall	4.32%	4.32%	2.87%	3.45%	-0.87	Yes
4B	Suspension/ Expulsion Rate, by Race/Ethnicity			0.00%	0.00%	0.00	Maintain
5A	LRE: Regular Classroom	51.70%	45.02%	48.71%	72.62%	20.92	Yes
5B	LRE: Separate Classroom	22.62%	26.98%	19.18%	8.56%	-14.06	Yes
5C	LRE: Separate Facilities	3.20%	3.20%	2.82%	2.67%	-0.53	Yes
7A1	Positive Social-Emotional SS1		63.80%	66.32%	69.62%	5.82	Yes
7A2	Positive Social-Emotional SS2		82.10%	71.28%	68.41%	-13.69	No
7B1	Knowledge and Skills SS1		65.70%	67.13%	73.00%	7.30	Yes
7B2	Knowledge and Skills SS2		75.80%	53.44%	50.75%	-25.05	No
7C1	Use of appropriate behaviors SS1		78.70%	68.52%	67.97%	-10.73	No
7C2	Use of appropriate behaviors SS2		78.70%	63.08%	55.23%	-23.47	No
8	Parent Involvement	32.06%	44.74%	47.16%	50.20%	18.14	Yes
9	Disprop. R/E, Overall	0.00%	0.00%	0.00%	0.00%	0.00	Maintain
10	Disprop. R/E, Disability Category	0.00%	0.00%	0.00%	0.00%	0.00	Maintain
11	Timely Evaluation	76.84%	80.81%	94.55%	95.73%	18.89	Yes
12	Transition from Part C to Part B	92.01%	94.59%	96.54%	97.72%	5.71	Yes
13	Transition Planning on IEP by Age 16	56.10%		47.37%	50.91%	-5.19	No
14	Post-secondary Outcomes	91.24%					
14A	Measurement A			43.24%	54.43%	11.19	Yes
14B	Measurement B			70.29%	75.74%	5.45	Yes
14C	Measurement C			82.65%	87.87%	5.22	Yes
20	Timely and Accurate Data	88.74%	90.47%	92.86%	100.00%	11.26	Yes

* Indicator 7 is 2010-11 rate minus 2008-09 rate. Indicator 14 is 2010-11 rate minus 2009-10 rate. Note: see Display VIII-2 for an explanation of each indicator.

Display VIII-2: Explanation of Each Indicator

Indicator	Description
1 Graduation Rate	Percent of youth with IEPs graduating from high school with a regular diploma.
2 Drop Out Rate	Percent of youth with IEPs dropping out of high school.
3A Statewide Assessment	<i>Percent of districts meeting the State's AYP objectives for progress for disability subgroup:</i>
3B Participation Rate Reading	<i>Participation rate of children with IEPs in reading.</i>
3B Participation Rate Math	<i>Participation rate of children with IEPs in math.</i>
3C Proficiency Rate Reading	<i>Proficiency rate of children with IEPs in reading.</i>
3C Proficiency Rate Math	<i>Proficiency rate of children with IEPs in math.</i>
4A Suspension/Expulsion Rate, Overall	Percent of districts that had significant discrepancy in suspension/expulsion rates for greater than 10 days in a school year.
4B Suspension/Expulsion Rate, by Race/Ethnicity	Percent of districts that had significant discrepancy in suspension/expulsion rates by race/ethnicity for greater than 10 days in a school year
5A LRE: Regular Classroom	Percent of children with IEPs age 6 to 21 removed from regular class less than 21% of the day.
5B LRE: Separate Classroom	Percent of children with IEPs age 6 to 21 removed from regular class greater than 60% of the day.
5C LRE: Separate Facilities	Percent of children with IEPs age 6 to 21 served in public or private separate schools, residential placements, or homebound or hospital placements.
7A1 Positive Social-Emotional SS1	Of those children with IEPs who entered the program below age expectations, the percent that substantially increased their rate of growth by the time they exited.
7A2 Positive Social-Emotional SS1	Percent of children with IEPs who were functioning within age expectations by the time they exited.
7B1 Knowledge and Skills SS1	Of those children with IEPs who entered the program below age expectations, the percent that substantially increased their rate of growth by the time they exited.
7B2 Knowledge and Skills SS2	Percent of children with IEPs who were functioning within age expectations by the time they exited.
7C1 Use of appropriate behaviors SS1	Of those children with IEPs who entered the program below age expectations, the percent that substantially increased their rate of growth by the time they exited.
7C2 Use of appropriate behaviors SS2	Percent of children with IEPs who were functioning within age expectations by the time they exited.
8 Parent Involvement	<i>Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities.</i>
9 Disprop. R/E, Overall	<i>Percent of districts with disproportionate representation of racial and ethnic groups in related services categories that is the result of inappropriate identification.</i>
10 Disprop. R/E, Disability Category	<i>Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.</i>
11 Timely Evaluation	Percent of children with parental consent to evaluate, who were evaluated and eligibility determined within 45 days.
12 Transition from Part C to Part B	Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays.
13 Transition Planning on IEP by Age 16	Percent of youth aged 16 and above with an IEP that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the postsecondary goals.
14 Post-secondary Outcomes	Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were enrolled in post-secondary education/training or employed.
14A Measurement A	Percent of youth enrolled in higher education within one year of leaving high school;
14B Measurement B	Measurement A plus percent of youth competitively employed within one year of leaving high school
14C Measurement C	Measurement A plus Measurement B plus percent of youth enrolled in any other type of post-secondary education/training or employed in any other type of employment
20 Timely and Accurate Data	Percent of state-reported data that are timely and accurate.

SPP Indicators: District Results Over Time

To determine the impact of the monitoring process on SPP indicators, it is necessary to examine changes over time at the district level. For this analysis, the evaluators compared the changes over time in the indicator data for districts that participated in the focused monitoring process to the changes over time for districts that did not participate in the focused monitoring process. Unfortunately, the data available to the evaluators was limited at the district level, because 2010-11 district level data for indicators other than 3C was not made available. On March 23, 2012, Santana Thibedeau emailed the evaluators and stated:

The Bureau is in the process of developing our district data profiles for 10-11. We are developing these profiles using the federal established timelines. Since your charge is to evaluate the monitoring functions of the bureau and not NH school districts, shorting the federally established timelines would put an undue burden on districts' personnel to verify their data in a condensed window of time. Furthermore, I do not have the staff capacity to comply with your request to shorten the federally established timeline and to support the districts in the same fashion as the Bureau has done with past district data profiles. The Bureau does understand that the district level data for 10-11 will not be part of the evaluation.

It was always the Bureau's understanding that the district level data for 10-11 would fall outside of the timeline for this project.

However, it was not the evaluators' intention to shorten the time for data verification at the district level; rather, the evaluators were requesting a brief delay in the final report of approximately one month's duration in order to consider and include the most recent data in the evaluation report.

Thus, for all indicators except 3C, 5A, and 5B, the evaluators were able to examine the change in data from only 2007-08 to 2009-10. For indicators 3C, we relied on data from the NECAP testing site:

<http://reporting.measuredprogress.org/nhprofile/reports.aspx>

On May 20, 2012, the evaluators discovered that the 2010-11 district profiles were available on the NH website. The evaluators downloaded the 169 district profile pdf files and entered, by hand, indicator 5A and 5B data in order to have the most recent data on least restrictive environment.

For data on the other indicators the evaluators relied on data provided by NHDOE or that were obtained from the district data profiles on the New Hampshire website:

http://www.education.nh.gov/instruction/special_ed/data_profiles.htm

The most recent SERESC annual report stresses the importance of longitudinal data:

The key question in year II of the FM Process is “What evidence is there that the plan is positively impacting student learning and that the plan is narrowing the achievement gap?” Trying to produce this evidence in Year II of the FM Process has been approached cautiously, as systemic change and improved learning results are not typically demonstrated in the first year of implementation in improvement plans.¹⁹⁵

Thus, it is unfortunate that the evaluators did not have complete district-level data from 2010-11.

The SERESC annual report quote above stresses two purposes of the focused monitoring process:

1. to impact student learning, and
2. to narrow the achievement gap between students with disabilities and students without disabilities.

Given that these are stated as purposes of the focused monitoring system, the evaluators set out to determine the extent to which the focused monitoring system has met these purposes. Displays VIII-3 and VIII-4 show an analysis of these two purposes. Note that the displays show the percentage of monitored districts from 2007-08 through 2010-11 that achieved these two purposes. However, the districts monitored in 2010-11 would have had very little time, if any time at all, to change any practices as a result of the focused monitoring system before the state test was administered in 2010-11. Thus, the districts monitored from 2007-08 through 2009-10 are emphasized in the analysis.

As can be seen in Display VIII-3, all but one of the nineteen districts monitored in 2007-08 through 2009-10 increased reading proficiency from 2007-08 to 2010-11, and all but three increased math proficiency from 2007-08 to 2010-11. 94.74% of monitored districts in 2007-08 through 2009-10 improved their reading proficiency, compared to 71.43% of non-monitored districts. 84.21% of monitored districts in 2007-08 through 2009-10 improved their math proficiency compared to 69.64% of non-monitored districts. Thus, the monitored districts were more likely than the non-monitored districts to increase reading proficiency rates and math proficiency rates of students with disabilities.

¹⁹⁵ *Special Education Program Approval and Improvement Process 2010-2011 Year End Summary Report*, 12/21/11, p. 30.

The average increase in reading proficiency rates was 9.74 percentage points for the 19 districts monitored from 2007-08 through 2009-10 and 6.75 percentage points for the non-monitored districts. Note however that the increase in average reading proficiency varied by year monitored, with districts monitored in 2008-09 and 2009-10 paradoxically showing the most growth (more than ten percentage points) and districts monitored in 2007-08 showing the least growth (just under five percentage points).

The average increase in math proficiency rates was 6.21 percentage points for the 19 districts monitored from 2007-08 through 2009-10 and 5.40 percentage points for the non-monitored districts. Note however that the increase in average math proficiency also varied by year monitored, with districts monitored in 2008-09 and 2009-10 showing the most growth (more than seven percentage points) and districts monitored in 2007-08 showing the least growth (about 1.5 percentage points). Thus, 2007-08 monitored districts have shown the least amount of change in math proficiency rates for students with disabilities over time.

Display VIII-4 shows the percentage of districts that narrowed the achievement gap. 47.37% of monitored districts in 2007-08 through 2009-10 narrowed the gap between students with disabilities and students without disabilities in reading proficiency compared to 48.67% of non-monitored districts. 31.58% of monitored districts in 2007-08 through 2009-10 narrowed the gap between students with disabilities and students without disabilities in math proficiency compared to 41.96% of non-monitored districts. Thus, there is little evidence that the FM process has resulted in a narrowing of the achievement gap which is the KPI chosen to guide the FM system.

The analysis of 2007-08 through 2010-11 proficiency data suggests that the focused monitoring system is fulfilling the first purpose of increasing achievement of students with disabilities. This same data suggests, however, that the second purpose of narrowing the achievement gap is not being differentially impacted by the focused monitoring system.

Display VIII-3: Indicator 3C – Changes in Proficiency Rates 2007-08 to 2010-11

	Districts Monitored in:				All Monitored Districts	Monitored Districts 07-08 through 09-10	Non-Monitored Districts
	07-08	08-09	09-10	10-11			
Number of Districts	7	6	6	5	24	19	112
Reading Proficiency							
Average 3C reading proficiency in 2010-11	29.43%	30.00%	35.83%	35.80%	32.50%	31.63%	43.58%
Average 3C reading proficiency in 2007-08	24.71%	18.83%	21.67%	32.00%	24.00%	21.89%	36.83%
Average difference in 3C reading proficiency (2010-11 minus 2007-08)	4.71	11.17	14.17	3.80	8.50	9.74	6.75
Percent of Districts with Increased Proficiency in Reading from 2007-08 to 2010-11	100.00%	83.33%	100.00%	60.00%	87.50%	94.74%	71.43%
Math Proficiency							
Average 3C Math proficiency in 2010-11	21.71%	25.17%	30.83%	29.40%	26.46%	25.68%	36.96%
Average 3C Math proficiency in 2007-08	20.26%	17.83%	20.17%	27.00%	21.04%	19.47%	31.56%
Average difference in 3C Math proficiency (2010-11 minus 2007-08)	1.43	7.33	10.67	2.40	5.42	6.21	5.40
Percent of Districts with Increased Proficiency in Math from 2007-08 to 2010-11	71.43%	83.33%	100.00%	40.00%	75.00%	84.21%	69.64%

Note: One district was monitored in both 2009-10 and 2010-11. It is counted only in the 2009-10 year.

Display VIII-4: Indicator 3C - Changes in Proficiency Rates and the Achievement Gap from 2007-08 to 2010-11

	Districts Monitored in:				All Monitored Districts	Monitored Districts 07-08 through 09-10	Non-Monitored Districts
	07-08	08-09	09-10	10-11			
Number of Districts	7	6	6	5	24	19	113
IEP Proficiency							
Percent of Districts that Increased Proficiency in Reading from 2007-08 to 2010-11	100.00%	83.33%	100.00%	60.00%	87.50%	94.74%	71.68%
Percent of Districts that Increased Proficiency in Math from 2007-08 to 2010-11	71.43%	83.33%	100.00%	40.00%	75.00%	84.21%	69.64%
Non-IEP Proficiency							
Percent of Districts that Increased Proficiency in Reading from 2007-08 to 2010-11	100.00%	66.67%	100.00%	80.00%	87.50%	89.47%	85.84%
Percent of Districts that Increased Proficiency in Math from 2007-08 to 2010-11	100.00%	100.00%	66.67%	100.00%	91.67%	89.47%	74.11%
Closing the Gap Between Non-IEP and IEP Proficiency Rates							
Percent of Districts that Decreased Gap in Reading Proficiency Rates from 2007-08 to 2010-11	28.57%	50.00%	66.67%	20.00%	41.67%	47.37%	48.67%
Percent of Districts that Decreased Gap in Math Proficiency Rates from 2007-08 to 2010-11	0.00%	33.33%	66.67%	40.00%	33.33%	31.58%	41.96%
Proficiency and Closing the Gap							
Percent of Districts that Increased IEP Reading Proficiency and Closed Reading Gap	28.57%	50.00%	66.67%	20.00%	41.67%	47.37%	46.90%
Percent of Districts that Increased IEP Math Proficiency and Closed Math Gap	0.00%	33.33%	66.67%	40.00%	33.33%	31.58%	40.18%

Note: One district was monitored in both 2009-10 and 2010-11. It is counted only in the 2009-10 year.

The most recent SERESC annual report does not assert any changes in student results and outcomes from the FM process. It does strike what could be read as appropriate cautionary notes, noting, for example, that "systemic improvements will take time." Moreover, the report states that the role of technical assistants in assisting Achievement Teams during year 2 of the FM process in a district is helping ensure that improvement plans are implemented, and implemented with fidelity, and that "there was ongoing data collection to demonstrate progress and impact upon student achievement."¹⁹⁶ However, none of these data are included in the annual report, nor are any other data showing the effect of FM on student performance.

This is striking, as the prior year's annual report did include assertions regarding gains made by students.¹⁹⁷ These asserted gains include:

Percent Proficient for Students Grade 1-8 & 11*

- From 2005 to 2008, all 16 Focused Monitoring school districts showed an increase in Percent Proficient on the NECAP Reading for **"All Students"**.
- From 2005 to 2008, 14 out of 16 Focused Monitoring school districts, showed an increase in Percent Proficient on the NECAP Reading for **"IEP Students"**.
- From 2005 to 2008, 15 out of 16 school districts showed an increase in Percent Proficient on the NECAP Reading for **"All other Students" (Students without IEPs)**.
- From 2005 to 2008, all 16 school districts showed an increase in Percent Proficient on the NECAP Reading for **"SES Students"**.
- From 2005 to 2008, of the 4 Focused Monitoring school districts with **"LEP Students"**, 3 showed an increase in Percent Proficient on the NECAP Reading.

Percent Making Growth Targets for Students Grades 4-8

- From 2005 to 2008, 12 of the 16 Focused Monitoring school districts showed an increase in percent of **"All Students"** making their growth targets on the NECAP Reading.
- From 2005 to 2008, 12 of the 16 Focused Monitoring school districts showed an increase in **"IEP Students"** making growth targets on the NECAP Reading.
- From 2005 to 2008, 11 of the 16 Focused Monitoring school districts showed an increase in percent of **"SES Students"** making their growth targets on the NECAP Reading.

¹⁹⁶ 2010-2011 Year End Summary Report, pp. 29-30. The same cautionary note was included in the prior year's report; see 2009-2010 Year End Summary Report, p. 25.

¹⁹⁷ 2009-2010 Year End Summary Report, pp. 27-28.

NECAP Reading Index Scores for Students Grade 1-8 & 11*

- Since 2005, Focused Monitoring **Pilot sites** gained an average of 5.5 index points over four years, whereas the state of NH made 4.1 points gain.
- **Focused Monitoring year-1** districts gained an average of 4.8 index points versus 4.1 points for the state.
- **Focused Monitoring year- 2** districts gained an average of 6.0 index points and the state gained 4.1 point.
- From 2005 to 2008, 11 of the 16 Focused Monitoring school districts exceeded the state index score in Reading.

*Weare, Plymouth, Allenstown and Wakefield do not have high schools

N. B. NECAP results for years 2005-2006 & 2006-2007 do not include grade 11.

Like the evaluators' analysis of 2010-11 data, this analysis using 2008-09 data as an end point suggests some positive achievement gains as a result of the focused monitoring system. These claims could not be analyzed by the evaluators due to their not having the 2005-06 data or complete 2006-07 data. However, there is no reason to doubt these claims made by SERESC.

NHDOE and SERESC staff members were interviewed by the evaluators regarding their views of the effectiveness of the NH FM process and whether data existed that showed the effectiveness of FM. Over half of the NHDOE staff did not respond to one of the questions, and several who did respond simply identified the roles they played regarding Indicator 3C and FM. In general SERESC staff responded thoughtfully to these questions, and it was clear that this issue was on minds of, and important to, staff directly involved in the FM process.

Below is a large and representative sample of responses, including paraphrases and quotations when exact quotes were captured by the evaluators:

- "Yes. FM works because there are a lot of meetings and sharing of data. General ed and special ed have professional development together. [There is a lot of] alignment."
- "I'll pass. I try not to get into the issue."
- Statewide assessment results show significant gains for all students, but the gap between IEP and non-IEP kids hasn't really narrowed. The FM and PA processes are working as a systemic model for improving results for all kids, but we've been talking about working harder to improve outcomes for just students with disabilities.

- “There’s no one variable.” SERESC has looked at data belonging to districts that have been through the FM process: some have narrowed the gap, and others have not.
- Not aware of any such data. “I don’t see any evidence anywhere – anything you’re collecting – to show that what you’re doing works.” There needs to be a set of indicators to measure this.
- “That’s the hope.” “We’ve done that data analysis a number of times” and had a number of conversations. Team looks at statewide assessment scores. “There are multiple factors that are impacting any change in student achievement.” Sometimes gains are erased years later. “If you have suggestions on that, we’d be open to hear them.” Often “it’s the general education system that is denying kids FAPE.” “Generally what we find is that it’s a whole systems issue.”
- “We’re right at the cusp of that.” SERESC is developing indicators that will show the impact of FM on improving outcomes.
- “In the future, we need to look at more than one KPI.” Some other measures to consider include NWEA MAP data and growth on NECAP. 60% of districts that have been monitored have shown gains on their NECAP data for students with disabilities.
- “There may not be significant change in the gap, there is a relevant trend of overall improvement. But the gap stays the same.”
- The evidence is in NECAP scores, the DOE website, AYP, and RtI. “There may need to be a new KPI.”
- There is no evidence that the gap is being reduced, but SERESC is “working on other indicators of improvement.” “Focused monitoring is shaky when you look at sustainability of interventions.” You don’t see improvement if you look at the gap annually. You have to look at “longitudinal data” to see change.
- “We’ve been looking at data. [FM and PA] have made an impact. In some districts yes and in some no.” SERESC is working on alternative indicators, such as “attendance, graduation rates and postsecondary success.”
- SERESC is working on additional indicators to show improvements in districts that have had FM visits. “It would be really helpful if we had a solid set of indicators” to show the effectiveness of the FM process.
- Need indicator data to track results over time. State also needs to build better data systems, use data more effectively, grow leadership, develop PLCs, develop and implement various interventions.
- It’s been a struggle with this group. They’re not accustomed to that kind of thinking. The team is working on a set of indicators to measure this, and there is a draft document. Not sure that the indicators are the right ones and thinks there are too many indicators in the draft document.

- “Usually we (SERESC) work with accountability folks at NHDOE and not the Bureau.” “I feel like there’s a bit of a disconnect between their use of data and our use of data” (NHDOE vs. SERESC).
- Working to get the right group of indicators together.
- “There’s is no hard data to demonstrate reduction of the achievement gap.”
- “Some do and some don’t [but] districts are finding it beneficial.”
- “We may need a different KPI [such as] graduation rate or reduction of special ed referrals. We’re not sure where we’ll go.”
- “We may need to change assessments [regarding] grade levels and times. We only test once at Grades 3, 8 and 11.”
- “It’s a comparison of apples and oranges” [for students with low incidence disabilities].

Survey Data from LEAs

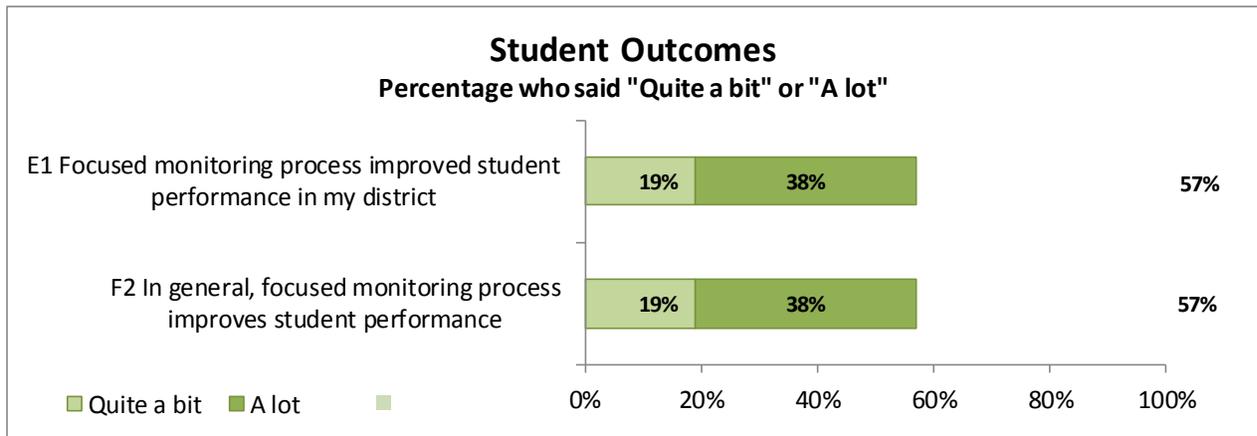
In April, 2012, the 24 districts that had been monitored between 2007-08 and 2010-11 were emailed a survey that asked about their experiences with the monitoring process. This survey asked about the monitoring report, findings of noncompliance, corrective action plans, technical assistance received from NHDOE, technical assistance received from SERESC, student outcomes, and their overall impression of the monitoring process. Seventeen out of 24 districts (71%) responded to our survey. The responses on the items that relate to student outcomes are reported in this chapter. See Addendum D for a full report.

As Displays VIII-5 and VIII-6 indicate, the majority of districts that responded had a favorable opinion about the FM process and believe that it has had an impact on the outcomes of students with disabilities in their districts.

Display VIII-5: Students Outcome Questions from the LEA Survey on Focused Monitoring

E1. To what extent did the focused monitoring process as applied in your district lead to better performance by students with disabilities in your district?									
1 Hardly at all	6%	2 A little bit	6%	3 Some	31%	4 Quite a bit	19%	5 A lot	38%
E2. Since the time your district was monitored, can you point to any data that show improvements in performance, outcomes, and/or results of students with disabilities?									
1 Yes	75%	2 No							
Think about the monitoring process that your district experienced, what you know about what other districts have experienced, and what you know in general about the monitoring process used by the NHDOE.									
F2. In general, to what extent is the focused monitoring process adequate to improve the performance of students with disabilities?									
1 Hardly at all		2 A little bit	19%	3 Some	25%	4 Quite a bit	19%	5 A lot	38%

Display VIII-6: District Perceptions Regarding the Extent to Which the Focus Monitoring Process Impacts Student Outcomes



When asked to explain ratings to question E1 regarding if the focused monitoring process led to better performance by students with disabilities, some of the favorable responses included:

- “Focused us on a few areas for the school year – RtI, inclusion, measurable goals, transition – Indicator 13.”
- “This process helped us to identify key factors in why our students with disabilities demonstrated poor math skills. Based on those key factors, very significant changes have taken place.”
- “New instructional models were introduced for students. Training for staff was provided leading to a better understanding of targeted areas of deficiency.”
- “Our students gained more access to the general curriculum.”
- “Brought achievement gaps and deficits to the attention of those involved.”

Some of the less favorable responses included:

- “A large gap still remains between special education and regular education students.”
- “We have closed the gap significantly in some grades. However we continue to show a large gap in achievement. We have not been able to sustain improvements at the high school level.”

When asked to explain their responses to question E2 regarding if in general the focused monitoring process is adequate to show improvement for outcomes of students with disabilities, responses included positive gains in NWEA testing, AIMS web, NECAP assessments, and DRA scores.

When asked to explain their ratings to question F2 regarding if the focused monitoring process led to better performance by students with disabilities, common themes included the focus on data, root cause analysis, measurable goals, instruction, and programs; the involvement of a district-wide team; and the comprehensive nature of the review.

Some of the favorable responses included:

- “Once fully embraced by a comprehensive representation of staff and administration it becomes the springboard for digging deeply into the performance (formative & summative) data of all students and implementing school wide changes that impact improved outcomes for all students.”
- “The FM process was effective because it insisted on a school-wide effort that needed planning and collaboration.”
- “The process is done in such a way that teams don’t feel threatened by outside evaluators. It is done in the manner that teams use it to take a good look at the things we do well and the things we need to improve.”
- “Looks at PROGRAMS and services rather than just paperwork compliance.”

Some of the less favorable responses included:

- “In all, however, we do not believe the process has had a large impact on student outcomes.”
- “Need more involvement from building administrators and classroom teachers.”
- “The recent improvement in our achievement results in some grades came from introduction of a new language arts curriculum and professional development associated with implementation, not from any activities designed as a result of the FM.”

SPP Indicator 5: LRE

Even though it is not an explicit goal of the focused monitoring system to increase the rates at which students with disabilities are educated with their nondisabled peers, because LRE is a monitoring priority under IDEA the effect of a monitoring system on placement rates is an important issue for analysis.

Display VIII-7 shows the percentage of students with disabilities placed in the regular classroom at least 80% of the time in 2007-08 and in 2010-11. Please note that there is some question about the accuracy of these data (see below) so these data should be interpreted with caution. Also, note that for one of the districts monitored in 2009-10 (Hinsdale), the 2010-11 district profile report was not available on the NH site. Thus, this district is not included in the LRE analysis below.

The data in the display show that 14 of the 18 districts (77.78%) monitored in 2007-08 through 2009-10 increased the percentage of students placed in the regular classroom between 2007-08 and 2010-11. However, the comparable percentage for non-monitored districts is 90.78%. Given the weaknesses of NHDOE's monitoring efforts with respect to LRE as discussed above, this finding is not surprising.

Display VIII-7: LRE Data

	Districts Monitored in:				All Monitored Districts	Monitored Districts 07-08 through 09-10	Non-Monitored Districts
	07-08	08-09	09-10	10-11			
Number of Districts	7	6	5	5	23	18	141
LRE							
Average 5A percent in 2010-11	75.15%	69.77%	72.44%	70.17%	72.08%	72.61%	75.12%
Average 5A percent in 2007-08	45.23%	56.10%	61.54%	45.56%	51.68%	53.38%	49.79%
Average difference in 5A (2010-11 - 2007-08)	29.92	13.67	10.90	24.61	20.39	19.22	25.33
Percent of Districts with Increased LRE in the regular classroom from 2007-08 to 2009-10	100.00%	66.67%	60.00%	100.00%	82.61%	77.78%	90.78%

Note: One district was monitored in both 2009-10 and 2010-11. It is counted only in the 2009-10 year.

Verification of Data Accuracy

SPP Indicator 20 measures the extent to which state-reported data, including 618 data, State Performance Plan, and Annual Performance Reports are:

- submitted on or before due dates; and
- accurate, including covering the correct year and the following correct measurement.

According to the most recent APR:

The NHDOE ensures that data submitted in the SPP/ APR are valid and reliable through a variety of means. Data tied to the 618 data reporting requirements have data quality checks built into the data collection process. Data collected through a desk audit monitoring process and statewide surveys are reviewed by the NHDOE and verified through cross-checks for data accuracy and completeness.¹⁹⁸

¹⁹⁸ FFY '10 APR, p. 112.

The NHDOE used different databases for the collection of the 618 data for the federal tables. Table 1, 3, 4, and 5 are generated using information from the New Hampshire Special Education Information System (NHSEIS). Table 2 was generated using information from the NHDOE Bureau of Credentialing. Table 6 was generated using information from the NHDOE Bureau of Accountability, Table 7 was generated using the database from the NHDOE Office of Legislation and Hearing and Bureau of Special Education, Complaint Officer, and Table 8 was generated using the data collected through a desk audit process by the Bureau of Special Education.

NHSEIS was designed using data collection instruments which ensure that data entered into the system were valid and reliable. NHSEIS provides error message with explanation when data are entered that are incorrect giving districts an opportunity to reenter correct data. The NHDOE offered continuous technical assistance and training to districts including monthly forums, on-site training and phone/email support. NHDOE staff members were available to assist districts on a daily basis with NHSEIS.

The NHDOE worked with Data Accountability Center (Westat Sanay Abraham) to verify and agree with Part B Report that all report and error messages that were sent to the NHDOE had been submitted and responded in a timely and accurate data for FFY 2010.¹⁹⁹

In its 2009 verification review visit OSEP concluded that the state's data system is "reasonably designed" to collect valid and reliable data. The evaluators generally agree with this assessment. OSEP also cautioned, however, that "without conducting a review of data collection and reporting practices at the local level" it could not "determine whether all public agencies in the State implement the State's data collection and reporting procedures in a manner that is consistent with Part B."²⁰⁰ The evaluators similarly cannot reach a definitive judgment regarding the accuracy of NHDOE data without performing a data verification of a random sample of students at the local level, by comparing data reported through NHSEIS to student special education files and actual placements, an activity well beyond the scope of this evaluation.

Moreover, it is also important to note that NHDOE does not appear to conduct such activities as a routine part of its data verification activities (see APR quotations above, but see below as well). However, the state statute requires the "development and application of methods to ensure the accuracy of all such data including data as

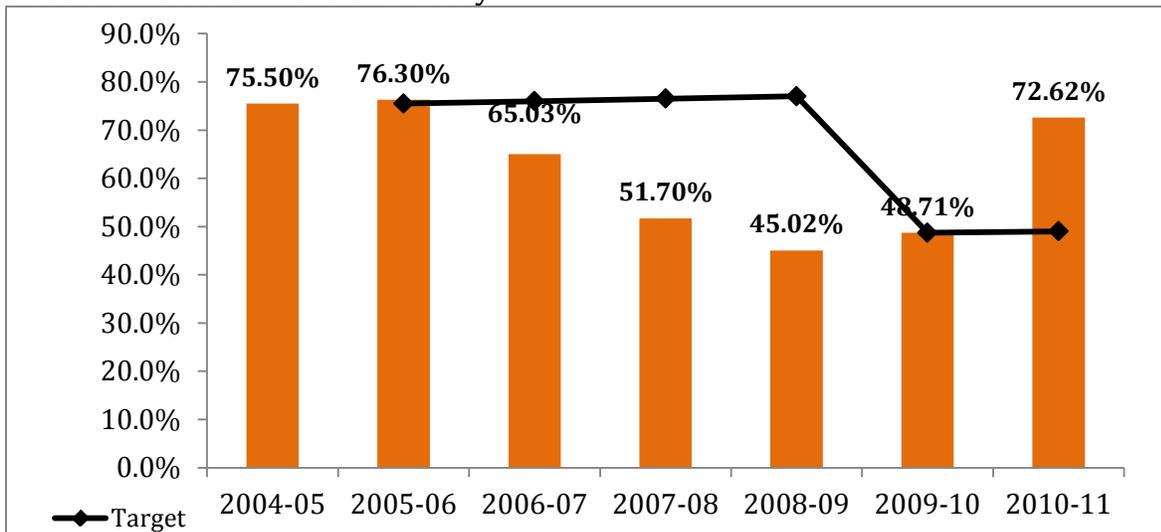
¹⁹⁹ FFY '10 APR, p. 113.

²⁰⁰ OSEP 2009 verification visit letter enclosure, 1/15/10, p. 12.

entered in student records and as transmitted to the department, *to include necessary on-site verification of data.*"²⁰¹

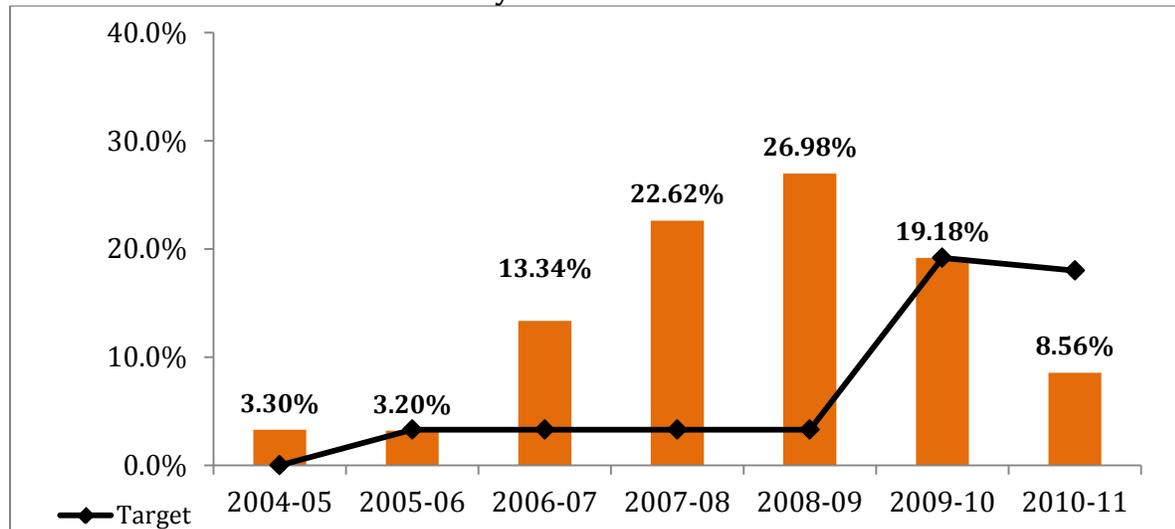
In examining data over time and reading each year's APR, the accuracy of Indicator 5 data stands out as particularly questionable. As Displays VIII-8 and VIII-9 show, the data has been very jumpy over time. In examining national data from the other 49 states, it is very unusual for LRE data to show this much variance from year to year. Between 2008-09 and 2009-10, the median increase in Indicator 5A for the states was .83 percentage points. In sharp contrast to this, from 2009-10 to 2010-11, NHDOE reports that indicator 5A increased by 24 percentage points. National data for Indicator 5B show that the median decrease from 2008-09 to 2009-10 for the states was .27 percentage points. In sharp contrast to this, from 2009-10 to 2010-11, NHDOE reports that indicator 5B decreased by 10.62 percentage points.

Display VIII-8: Indicator 5A: Percent of students placed inside the regular classroom 80% or more of the day



²⁰¹ 186-C:5 (III) (b); emphasis added.

Display VIII-9: Indicator 5B: Percent of students placed inside the regular classroom less than 40% of the day



According to interviews with NHDOE staff members, fluctuations exist in LRE data because NHDOE used to have an "archaic" data system and now uses the NHSEIS data system. LRE data are verified through this system. Districts self-review the data and confirm it before submitting to NHDOE. NHDOE also reviews data, and may contact districts and re-pull the data if there are questions or discrepancies. NHDOE has provided professional development on LRE data that it believes has resulted in a common understanding of LRE definitions and hence data that are more accurate than in the past. As a result of this training, NHDOE staff pointed to this example: LEAs now universally understand that full-time placement in a general education classroom is to be reported as an educational setting of 100% general education regardless of the extent of special education and related services. NHDOE points out that LRE data are also "monitored by stakeholders" as a means toward ensuring accuracy and accountability.

This explanation may well be correct, and the data reported in the past, data that at the time NHDOE also regarded as accurate enough to report to OSEP each year, may have been inaccurate. But it is also possible that the most recently reported data are inaccurate.

When asked via a written questionnaire how NHDOE knows that the data are accurate, NHDOE responded:

The Bureau gives that data back to the school districts for them to review. The NHDOE reviews this data through the Focused Monitoring Process, as well as the Case Study Process. The placement information in the IEP is reviewed through the Complaint Process. The placement is also reviewed during the CatAid and 402 processes. NHSEIS has business rules regarding the placement

as well as the business rules that are in EDEN when we have to submit this data for the federal report.²⁰²

However, "reviewing" data and verifying its accuracy are not the same activities; the evaluators are unclear as to what precise activity NHDOE is referencing in this response. Moreover, no evidence was encountered during observations of NHDOE's FM and PA monitoring activities that the accuracy of reported data is ascertained during monitoring, no instruments for the purpose of data verification were sent to the evaluators for review, and no findings related to data accuracy were encountered in FM or PA monitoring reports. Further, the business rules of a database may flag obviously incorrect data entry, but cannot ascertain that data entered that do not violate such rules are accurate. In addition, complaints typically concern one student, and are therefore not likely to allow an agency to draw defensible conclusions regarding the accuracy of all data reported by an LEA. Finally, neither the APR nor NHDOE's email set forth any results from NHDOE's data verification activities--how many students were reviewed through each mechanism, the database fields that were verified for each student, and the percentage of students for whom data was reported accurately.

In the FFY 2010 APR, NHDOE explained the changes in Indicator 5A and 5B data as such,

The NHDOE conducted NHSEIS forums to help districts better understand how the IEP team makes decisions about LRE as well as how to enter data into NHSEIS to reflect actual placements where services are provided, resulting in significant improvement in this indicator. The NHDOE led discussions with local districts to explore the misconception at the district level that special education services should be reported in the special education class, even when those services occurred in the regular education setting. Based on these discussions, local special education directors have worked with staff to understand where services actually are provided and to ensure that data are reported in NHSEIS.

An increased number of students in NH have been educated in the public school setting, and indeed in the regular classroom in FFY 2010. This is confirmed by the consistent trend data for part C of the measurement, which is not affected by the district reporting for amount of time in the regular class. The NHDOE continued to work with the vendor for NHSEIS as well as with DAC, NERRC and local districts to identify the challenges and to develop solutions.²⁰³

The evaluators are unsure as to how the consistency in Indicator 5C speaks to the accuracy of the Indicator 5A and 5B data.

²⁰² Email, 5/8/12.

²⁰³ FFY '10 APR, pp. 32-33.

Section IX

Are staffing resources sufficient to implement a monitoring and program approval process capable of ensuring FAPE in the LRE and improved results/outcomes to NH students with disabilities?

The state statute requires the Commissioner of NHDOE to employ or contract with sufficient numbers of qualified personnel to carry out the monitoring, program approval, and enforcement activities specified in it. These activities include, but are not limited to data management, analysis, and correction; coordination and staffing of on-site monitoring teams; report preparation; and determining, monitoring or supervising CAPs and sanctions.²⁰⁴

In the spring of 2012, external evaluators interviewed staff members of NHDOE, SERESC, advocacy organizations, and the State Advisory Committee on the Education of Students/Children with Disabilities (SAC). The 22 interview sessions included a total of 33 individuals. Eight NHDOE staff and ten SERESC staff were interviewed individually, and group interviews were conducted with a total of six individuals representing three advocacy organizations: the Parent Information Center, Disability Rights Center and the New Hampshire Association of Special Education Administrators. Eleven members of the SAC were present for a group interview, including a NHDOE employee assigned to the Special Education Bureau. Not all members of the Committee were present for the interview, and not all members who were present chose to comment.

During interviews, individuals were asked their opinions regarding whether SERESC had enough resources/staffing to accomplish the desired outcomes of FM and PA, and if not, what else was needed. These individuals were also asked whether, in their view, NHDOE had enough resources/staffing to accomplish the desired outcomes of the SPP and APR, and if not, what else was needed. While there was not unanimity among respondents, the majority of interviewees thought that SERESC has adequate staffing and resources to fulfill the state statute's mandates while NHDOE does not.

NHDOE Staffing

Four NHDOE employees reported that the Bureau does not have adequate staffing and resources to accomplish the desired outcomes related to the SPP, APR, and other aspects of general supervision and compliance monitoring. One employee commented that the Bureau is "very much understaffed," and employees are "asked to do more and more [in spite of] fewer people with less experience." Another employee commented that NHDOE is understaffed, "But we get the job done."

²⁰⁴ 186-C:5 (VIII)

Staff asserted that the State of New Hampshire does not allocate funds to support the Bureau of Special Education and that certain vacant positions within the Bureau are currently frozen. Employees recommended increased support from the State Legislature and the State Budget Committee; staff specifically recommended an allocation of State funding and approval to fill vacant positions.

Three NHDOE staff expressed the opinion that the Bureau *does* have adequate resources and staffing. Although two of the three added that increased staffing and resources would provide opportunities to "do more innovative pieces" and to "build more capacity," the third employee said, "Just having more or other staff is not more effective. It's how you manage it." One NHDOE employee had no comment on the adequacy of its staffing and resources.

Eight SERESC staff asserted that NHDOE *does not* have sufficient staffing and resources to accomplish desired outcomes related to the SPP, APR and other aspects of general supervision and compliance monitoring. Three expressed the opinion that the Bureau is "woefully understaffed." Two others commented that NHDOE employees include "a number of good people" whose effectiveness is impeded by "high turnover, low pay, and limited experience" within NHDOE. One felt that the Bureau has a "good number of bodies" but that some were not really experienced or capable. Additional comments included:

- "I have questioned the capacity of some of the personnel they [NHDOE] have had over the years."
- "People don't expect anything from them [NHDOE]."
- "I've been in New Hampshire for [X] years, and the Department has never been able to do the job it's been asked to do."

SERESC employees recommended State funding and approval to fill vacant positions at the Bureau. One employee voiced the opinion that the State Legislature "wants to get rid of [the Department of Education/Special Education Bureau]." One SERESC employee expressed the opinion that NHDOE has adequate staffing and resources but would not be able to fulfill its general supervision responsibilities "without the SERESC contract." Another employee voiced no opinion.

The consensus among all three advocacy groups was that NHDOE does not have the staffing and resources necessary to fulfill responsibilities related to the SPP, APR, compliance monitoring, and other aspects of general supervision. One interviewee responded, "Absolutely not!" when asked if NHDOE staffing and resources were adequate, while another advocate asserted that NHDOE is "understaffed [and has] no state money." Advocates recommended state funding of new NHDOE positions, increased contracts with outside service providers, and "tweaking" the contract with SERESC.

SAC members agreed that NHDOE does not have the staffing and resources necessary to fulfill general supervision and compliance monitoring responsibilities, including those associated with the SPP and the APR. Two of the members reported

that the Special Education Bureau has been "decimated" and that staff are "doing the best they can." Two other members, while agreeing the Bureau is understaffed, commented that NHDOE "activities are not calculated to [effect] change" and that "the planning part is not okay." Three Committee members did not express an opinion. Members of the SAC made no specific recommendations as to what else might be needed to ensure adequate staffing and resources at NHDOE.

SERESC Staffing

Four NHDOE employees expressed the opinion that SERESC has adequate staffing and resources to accomplish the desired outcomes of Focused Monitoring and Program Approval. One employee commented that NHDOE "would not have the capacity [to accomplish FM and PA duties] without outside agency help" and that SERESC "has qualified people with better pay." Another staff member commented that SERESC has sufficient financial resources and added, "They [SERESC] receive about \$750,000 per year, although their manpower at times is a little short." Four NHDOE employees were either unsure about the adequacy of SERESC staffing or provided no comment.

Seven SERESC employees expressed the opinion that their agency has adequate staffing and resources to accomplish the desired outcomes of FM and PA. Two of the seven reported that SERESC "currently meets the needs of the Department of Education." On the other hand, three other employees believed SERESC does not have sufficient staffing and resources for FM and PA. One commented that there is "never enough." Two others expressed the opinion that NHDOE contract for SERESC's services needs to be "adjusted" in light of "increased needs [but the] same resources for the past five years." One also pointed out that he/she would like to see more districts involved in FM each year and added, "It would be good to work for a longer period of time in some districts."

Representatives of all three advocacy groups agreed that SERESC has (or "appears to have") sufficient staffing and resources to accomplish the desired outcomes of FM and PA. Two of the three groups noted that NHDOE contract with SERESC exceeds \$700,000 per year, and one group asserted that SERESC has "carried out its duties per the contract."

SAC members who voiced an opinion agreed that SERESC has sufficient staffing and resources to fulfill FM and PA duties. One SAC member commented that SERESC staff "have the talent" to achieve the desired outcomes, but that they "could be in more districts." Four SAC members did not respond.

Additionally, one SERESC staff member noted that the SERESC team is constantly evolving, and efforts are made to ensure that a core of knowledge is maintained. But another stated his/her view that SERESC currently has too many people with the same kind of background and expertise. In recent years, according to the interviews, SERESC FM and PA staff have attended NHDOE trainings on issues such as the Common Core Standards, Assessment, Indicator 13, RTI and PBIS,

training one SERESC staff member described as the "most rewarding" he/she had ever been a part of. However, several noted that there was no "formal training" in monitoring for new staff, which was a particular need for staff with little or no IDEA experience. The training for new staff was described by one as "embedded coaching"²⁰⁵ and by another as "more on-the-job training" which varies according to the background of each new hire. FM and PA procedures are also reportedly discussed at each annual SERESC retreat, but one staff member interviewed still felt that he/she did not understand these processes as well as he/she would like to.

Indeed, embedded coaching approaches to staff development in monitoring can be a powerful reinforcement for what is learned in more formal training. However, the former is not a suitable replacement for the latter. There is a middle ground, though, which is to develop and implement a formal prestaffing/ staff development component that embeds training for monitors in the monitoring prestaffing process, a process that would involve drilling down data, developing compliance hypotheses based upon the data, creating purposeful samples of students, and determining methodologies for verifying or falsifying the hypotheses. A formal prestaffing process is not currently a component of NHDOE monitoring system, as seen above.

In sum, then, the evaluators cannot determine whether the total number of employees available for monitoring between SERESC and NHDOE is adequate. However, it is reasonably clear that SERESC staffing levels are sufficient to implement FM and PA as those processes are currently constituted, and that NHDOE general supervision and monitoring staffing is lacking. At the same time, however, it is clear from the results of this evaluation that there are significant flaws in both the FM and PA processes, and correction of these deficiencies is likely to require staffing adjustments. Specifically, it is likely that additional staffing is needed in the Bureau for full implementation of all general supervision and monitoring activities. Also, current staffing should be deployed in different ways in order for NHDOE to develop the internal expertise and infrastructure it needs to improve educational results and functional outcomes for all children with disabilities; ensure that all students are receiving FAPE in the LRE; and ensure that public agencies in the state meet the program requirements of IDEA, emphasizing those most closely related to improving educational results for students with disabilities.

²⁰⁵ "Embedded coaching" reportedly involves pairing new staff with more experienced monitors during on-site FM and PA activities.

Section X

Recommendations

Based on the investigation conducted over the past several months and conclusions offered related to the evaluation questions detailed above, the external evaluators offer the following recommendations as means of improving New Hampshire's special education monitoring procedures and practices.

During conversations with NHDOE staff members,²⁰⁶ SERESC Focused Monitoring and Program Approval staff, parent and advocacy groups (including the Disability Rights Center and the state's Parent Information Center), and the State Advisory Committee, the evaluators also solicited recommendations. Relevant recommendations from these parties are also noted separately within each of the subsections below.

A. Use of Data in Focused Monitoring and Program Approval

1. **Expand the use of data to guide the selection of districts for Focused Monitoring reviews.** In addition to achievement gap and size of the district, consider factors such as compliance history (prevalence/gravity of IDEA complaint decisions and due process hearing results) and performance on State Performance Plan indicators (especially 1, 2, 3C, and 5).
2. **Expand the use of data to guide Focused Monitoring and Program Approval methodologies in districts and facilities being visited.** Prior to visiting a district or private school, NHDOE and SERESC staff members should collaborate on a facilitated review and drill-down of all relevant special education data from the district or facility. The purpose of this pre-visit data review would be twofold: 1) to gain a thorough understanding of the district or facility strengths and apparent areas of difficulty, and 2) to develop specific compliance hypotheses (based on areas of poor performance) that will guide the review team's activities. Compliance hypotheses, which should vary according to each district and facility's unique data, should be developed in substantive areas most closely related to improving student outcomes with a particular emphasis on each student's receipt of FAPE in the LRE.
3. **Create purposeful samples of students for each compliance hypothesis.** The state's current practice of randomly selecting student files for review in both Focused Monitoring and Program Approval does not allow the best opportunity for identifying noncompliance. By selecting purposeful samples, the state would begin focusing its review activities on students who have the

²⁰⁶ Four of the eight NHDOE employees who were interviewed as part of the evaluation process offered recommendations, while the others declined to make any recommendations. One of the SEA staff members in the latter group commented, "Any concerns have been addressed. [The Focused Monitoring and Program Approval processes] are good and solid."

greatest likelihood of being affected by a district or facility's noncompliance. Multiple sets of district data, which are already collected by NHDOE, should be cross-referenced and disaggregated by student disability label, race/ethnicity, environment, and other criteria to identify these purposeful samples.

In addition to the evaluators' recommendations, see Display X-1 for additional recommendations made by others.

Display X-1. Subsection A Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- NHDOE: Increase the number of districts reviewed.
- NHDOE: Increase the use of data to guide reviews.
- SERESC: "The system of selection is probably flawed," but it is "in part, DOE-driven." NHDOE and SERESC need to work together to define priorities and work toward those goals.
- SERESC: Increase the sample sizes.
- Parent Group: Increase the number of districts site visits.
- Parent Group: Re-visit selection of the achievement gap as the State's Key Performance Indicator.
- SAC: Increase the number of FM reviews each year.
- SAC: Increase the amount of baseline data used in FM reviews.
- SAC: "Some districts go unmonitored, except for indicators, for years and years." Change that practice to include expanded, direct, and more frequent monitoring of districts not selected for Focused Monitoring on-site reviews.

B. Focused Monitoring and Program Approval Instruments and Methodology

1. **Ensure proper training in IDEA and state special education requirements prior to any individual's participation in Focused Monitoring or Program Approval.** Due to the various backgrounds of individuals currently participating in the Focused Monitoring and Program Approval processes, the state cannot be assured that each one is adequately prepared to properly conduct file review activities and other on-site activities. Evaluators observed confusion over certain requirements among review teams: proper training would help eliminate this confusion and ensure a greater likelihood of accurate, appropriate monitoring results.
2. **Eliminate "one-size-fits-all" compliance review documents.** As discussed in Subsection A, compliance hypotheses should guide the state's review activities for both Focused Monitoring and Program Approval. In keeping with this recommendation, the instruments used to for file reviews should be specific to the compliance hypotheses developed for each district and facility.

3. **Ensure that Focused Monitoring and Program Approval compliance review instruments accurately reflect federal and state requirements.** The general instruments currently in use contain some approximations of federal requirements, and some items do not reflect federal or state requirements. The former should be corrected, and the latter should be eliminated.
4. **Separate Focused Monitoring and Program Approval from other school improvement and/or accreditation activities.** In Focused Monitoring, activities that do not relate to the identification of noncompliance should not be included (i.e., Achievement Team data reviews, improvement planning, etc.). While these activities have positive aspects, the appropriate time for improvement planning within an IDEA Focused Monitoring context is *after* the state has alerted the district or facility to one or more findings of noncompliance. In Program Approval, the state's identification of noncompliance should be separated from private school accreditation activities.
5. **Increase the sample size for file reviews and case studies.** In order to ascertain a district or facility's compliance with IDEA requirements, one or two files per school is not adequate when many districts serve hundreds of students with disabilities. While it is rarely feasible to review every student's file, it is unlikely that systemic noncompliance can truly be identified using the limited samples of the current Focused Monitoring and Program Approval processes.
6. **Increase the amount of time allotted for compliance review activities.** By eliminating non-IDEA compliance components of the current Focused Monitoring and Program Approval processes, review teams would have additional time for appropriate reviews of student files, purposeful interviews with school staff, observations, and other focused activities to facilitate the identification of noncompliance. Even so, appropriate monitoring activities are likely to require more than the current one or two days in all but the smallest districts and private facilities.
7. **Employ additional strategies in the identification of noncompliance.** Rather than accepting verbal assurances and statements from district and facility staff during compliance reviews, the state should develop and implement a means of collecting information from school staff through a formal interview process. The interviews should not be the same for each staff member; in order to properly support a finding of noncompliance, they should be guided by file review results for individual students in each of the compliance hypotheses.
8. **Increase the involvement of NHDOE in the Focused Monitoring and Program Approval compliance reviews.** As observed by the evaluators, review teams are not always in agreement over how to interpret certain IDEA requirements or how to determine whether a certain set of facts connote noncompliance in a particular student's case. More NHDOE involvement would allow the SEA to guide compliance review activities and be correctly viewed as the final arbiter of compliance/noncompliance in the monitoring

context. This would also eliminate the practice of making findings of noncompliance based on the consensus of the review team.

In addition to the evaluators' recommendations, see Display X-2 for additional recommendations made by others.

Display X-2. Subsection B Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- SERESC: Focused Monitoring and Program Approval visits need to be more closely aligned. Teams also need to increase the intensity of the file reviews conducted at private schools.
- SERESC: Provide more technical assistance leading up to each Program Approval visit.
- SERESC: Review more districts using the Focused Monitoring process.
- SERESC: Include structured interviews in the Focused Monitoring and Program Approval processes.
- Parent Group: Shift the focus away from procedural compliance to more substantive issues.
- Parent Group: Increase the examination of standards related to improving educational results and functional outcomes.
- Parent Group: Shift the focus of on-site visits from reviewing a school district's policies to examining whether the policies are put into practice.
- Parent Group: When child-specific noncompliance is cited, NHDOE/SERESC should randomly sample other files in order to rule out systemic noncompliance.
- Parent Group: Increase NHDOE's involvement in the Focused Monitoring and Program Approval processes; "There is a perceived disconnect between DOE and [Focused Monitoring and Program Approval]."
- Parent Group: Increase the "rigor" of Focused Monitoring and Program Approval.
- Parent Group: increase the "substance" of Focused Monitoring; "de-emphasize procedural compliance."
- Parent Group: Expand the focus of Focused Monitoring and Program Approval visits from access, transition, and discipline to include child find, LRE and service delivery.
- SAC: Increase the involvement of students and parents in Focused Monitoring reviews.
- SAC: Increase the length of Focused Monitoring site visits.
- SAC: Improve the components of Focused Monitoring and Program Approval reviews; especially to include an increased emphasis on LRE.
- SAC: Refocus the reviews and corrective actions on substantive issues, rather than procedural compliance.

C. Focused Monitoring and Program Approval Reports and Corrective Action Plans

- 1. Eliminate Achievement Team (in Focused Monitoring) and accreditation information (Program Approval) from IDEA compliance reporting.** If a

discussion of any set of facts is not related to IDEA compliance, it should not be included with compliance reports.

2. **Improve the clarity with which findings are reported.** Compliance reports for both Focused Monitoring and Program Approval should carefully delineate the following: 1) the specific data that prompted the NHDOE's decision to conduct a compliance review in the district or facility, 2) the specific areas of compliance reviewed, 3) specific results of file review activities (including specific areas of procedural compliance), 4) results of any additional activities used to validate or invalidate relevant file review results (such as interviews, observations, etc.), and 5) the state's determination regarding noncompliance in each area of review – including whether a finding is child-specific or systemic. Problematic practices that do not represent noncompliance can be addressed in the reports, but guidance concerning improvement of these problematic practices should be described as recommendations.
3. **Eliminate the practice of including "suggestions" related to IDEA compliance in Focused Monitoring and Program Approval reports** (such as conducting annual IEP meetings or developing IEP goals to address all areas of need). Review teams and those developing Focused Monitoring and Program Approval reports must be able to clearly distinguish between what is *required* and what is simply *recommended*. In areas in which some information indicates noncompliance and other information indicates compliance, the state must have decision rules in place to enable review teams to make compliance determinations accurately and consistently.
4. **Within each Corrective Action Plan, include an appropriate description of acceptable evidence of correction for each finding.** When corrective actions are developed, include a description of acceptable evidence. For example, for a child-specific finding concerning measurable annual goals, acceptable evidence might be noted as, "A copy of the student's revised IEP containing measurable annual goals and the corresponding Prior Written Notice form will be submitted to the NHDOE by the date specified."
5. **Eliminate use of the "Assurance Form" to address child-specific findings of noncompliance.** To appropriately verify correction, the NHDOE should review the student's updated IEP instead of merely accepting assurances of correction.
6. **Ensure that both prongs of OSEP's Memo 09-02 are satisfied when conducting activities to verify correction of noncompliance.** When conducting verification monitoring activities, the state must ensure that student samples include a representation of students for whom the noncompliance was originally identified *and* a sample of students who were not included in the original monitoring activities.
7. **Formalize the state's tracking and follow-up procedures for districts and facilities that are in Corrective Action Plans, and apply the procedures uniformly across the state.** The state should have a process for consistently

checking in with districts and facilities at particular intervals to monitor CAP implementation. If possible, the state should also review data during the corrective action timeframe to see if data related to the noncompliance demonstrate improvement.

8. **For districts and facilities that are in danger of failing to correct noncompliance in a timely manner, establish a formal process allowing the state to intervene appropriately before the correction timeframe expires.** If evidence indicates a problem with correction of any finding, the state must be able to address its concerns in a proactive manner.

In addition to the evaluators' recommendations, see Display X-3 for additional recommendations made by others.

Display X-3. Subsection C Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- Parent Group: Ensure there is a connection between corrective action plans and reduction of the achievement gap.
- Parent Group: Increase follow-up at the end of the two-year Focused Monitoring cycle in order to ensure sustained compliance and reduction of the achievement gap.
- Parent Group: Increase the amount of general oversight at NHDOE to ensure implementation of corrective action plans.
- Parent Group: Increase fiscal support to implement corrective actions and ensure sustained compliance.
- SAC: Implement changes to ensure sustained compliance. "It's always the same issues and the same corrective actions."

D. Enforcement Actions

1. **Develop a set of decision rules used to determine appropriate enforcement actions based on the four criteria contained in state statute.**²⁰⁷ The state and its constituents must be assured that enforcement actions are applied consistently and uniformly across districts and private facilities.
2. **Develop and implement more meaningful enforcement actions for districts placed in the *Needs Substantial Intervention* determinations category and those failing to correct noncompliance within one year.** Requiring that a district develop a "plan" cannot be viewed as an effective enforcement activity for a district placed in *Needs Substantial Intervention*. Likewise, merely offering – rather than requiring – technical assistance to districts and facilities that are unsuccessful in correcting findings is not appropriate. Suitable enforcement actions for districts in the lowest determinations category and

²⁰⁷ Ed 1125.02 (d); see also 186-C:5 (d).

those with outstanding noncompliance should contain state-mandated activities rather than allowing districts additional flexibility and self-direction.

In addition to the evaluators' recommendations, see Display X-4 for additional recommendations made by others.

Display X-4. Subsection D Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- Parent Group: Tie noncompliance to required NHDOE and/or SERESC training. "There is a lack of follow-up and professional development in curriculum, alignment, etc."
- Parent Group: Increase the consequences of uncorrected noncompliance in Focused Monitoring and Program Approval; improve both sanctions and incentives.

E. Annual LEA Determinations

1. **Use performance and compliance indicators from the State Performance Plan in making annual LEA determinations.** The use of performance indicators would further emphasize the importance of continuously improving student outcomes and serve as further motivation for both compliance and performance – especially when the receipt of a poor determination carries potentially significant sanctions.
2. **Solicit stakeholder input into the development of a formula by which LEA determinations will be made.** Extending an invitation to stakeholders to solicit input on determinations formula revisions would strengthen relationships between NHDOE and its stakeholders and allow interested parties to collaborate toward a common purpose.

F. Verifying Accuracy of LEA Data and Ensuring Effectiveness

1. **Develop a system for verifying the accuracy of the indicator data collected from districts.** For example, such a process could involve selecting a random sample of IEPs from a given district and comparing what is on the IEP to what is on the dataset submitted by the district to the state.
2. **Related to Recommendation 1, a special effort should take place to verify the accuracy of Indicator 5 data.** Given the large fluctuations in Indicator 5A and 5B data over time, selecting a random sample of IEPs and determining if what is reported on the IEP is accurate and what is reported in datasets submitted to the state is accurate.
3. **Examine the effectiveness of the FM process on the monitored districts.** As mentioned in Section VIII, the 2010-11 SERESC end-of-year report did not

analyze the impact the FM process had on student performance. This should be examined. The impact of the FM process on the achievement gap should also be examined, since this is the primary justification for choosing a district for monitoring. However, the impact of FM on other performance indicators such as 1, 2, 3C, and 5 should also be examined. Further, as mentioned above, compliance hypotheses should guide the state’s monitoring efforts. For those compliance hypotheses that are confirmed, student performance data relating to these hypotheses should be examined to determine if improvement has been made. For example, if it is determined that a district is not providing FAPE to students in the regular classroom environment, a comparison of the proficiency rates of students before and after the Corrective Action Plan was implemented could be conducted to determine if student performance improved.

4. **Identify the “high-performing” focused monitored districts and determine why the FM process worked well for them.** For example, for those focused monitoring districts that have shown gains in student proficiency and a decrease in the achievement gap, what is it about the district and/or their experience with the FM process that allowed them to show such improvements in student performance. Then determine how this information can be used with other districts going through the FM process so that they too might experience positive student performance outcomes.

In addition to the evaluators’ recommendations, see Display X-5 for additional recommendations made by others.

Display X-5. Subsection F Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state’s monitoring procedures and practices.

- SERESC: There needs to be a core set of indicators to measure effectiveness – “I’m looking at this process and I’m thinking, ‘why can’t we get something in place by January and start?’”
- SERESC: Take a more longitudinal approach to data analysis. “Provide more time to sustain efforts.”
- SERESC: “A more articulate data set is needed. [SERESC] is developing alternative indicators.”
- Parent Group: Verify the reliability and validity of suspension/expulsion data used to determine compliance with Indicator 4 and LRE data used to determine compliance with Indicator 5.
- Parent Group: Increase steps taken to ensure the validity and reliability of student level data submitted to NHDOE and stored in NHSEIS.
- SAC: Increase the validity and reliability of data (especially suspension/expulsion) by ensuring universal understanding of compliance standards.

G. Staffing and Resources

- 1. Increase review team members' effectiveness by developing mandatory IDEA pre-visit training.** While shadowing can be an effective follow-up training method for review team members, the state must develop an effective means of training these team members before they assist in any compliance review activities. The lens through which SEA staff and SEA contractors must view compliance-related activities is often different than a typical LEA staff member's lens. Without proper training, compliance reviews can be compromised from the outset.
- 2. Reconsider the practice of contracting out the FM and PA processes in general, and reconsider contracting with SERESC.** With respect to the former, as noted in Section I of this report, one clear disadvantage of contracting out a state special education monitoring system is that directing funds outside an SEA prevents the SEA from developing its own internal capacity, a capacity that is then available for other purposes (such as technical assistance and monitoring Indicator compliance). With respect to the latter, as also noted in Section I of this report, contracting with SERESC creates a potential conflict with the state statute and a potential perception of bias among key stakeholders.
- 3. Review state restrictions on filling vacancies in the Bureau, and pursue state funding in support of additional staff if warranted.**

In addition to the evaluators' recommendations, see Display X-6 for additional recommendations made by others.

Display X-6. Subsection G Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- NHDOE: Reduce the amount of multi-tasking required of SEA personnel.
- SERESC: "I think we've been asked to do some of the work that DOE should be doing...but otherwise it just wouldn't get done."
- SERESC: Hire consultants who are specifically assigned to certain indicator areas. SERESC: "I would like to see us monitor ourselves internally" to ensure that SERESC is doing things effectively.
- SERESC: Better communication among additional aspects of the Department's work (i.e., Standards and Assessment, information regarding the Common Core Standards).
- SERESC: "It's the relationships. It's between the agencies." Communication needs to be improved between the NHDOE and SERESC.
- Parent Group: Given the lack of progress in reducing the achievement gap, evaluate whether the contract with SERESC (\$1,499,904 biennium) constitutes an efficient use of resources.
- Parent Group: Evaluate whether NHDOE's contract with SERESC constitutes a conflict of interest [RSA 186-C:5, III(f)].

- Parent Group: Increase the number of NHDOE staff members dedicated to provide technical assistance.
- Parent Group: Decrease the involvement of volunteers in the FM and PA processes.
- SAC: Consider ending the “SERESC monopoly” the next time NHDOE contracts with an outside agency to conduct compliance reviews.
- SAC: Increase the independence of Focused Monitoring and Program Approval reviews. Teams consist of district personnel, SERESC employees (who tend to be retired school employees), and volunteers (who tend to be active school employees).
- SAC: Increase state funding for the Special Education Bureau by increasing the number of regular state-approved NHDOE positions.
- SAC: Address high rate of employee turnover within the NHDOE: “[The Bureau] has been devastated. [NHDOE employees are] doing the best they can.