

GAO

Report to the Ranking Minority
Member, Committee on Health,
Education, Labor and Pensions,
U.S. Senate

September 2004

SPECIAL EDUCATION

Improved Timeliness and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System





Highlights of [GAO-04-879](#), a report to the Ranking Minority Member, Committee on Health, Education, Labor and Pensions, U.S. Senate

Why GAO Did This Study

The Individuals with Disabilities Education Act (IDEA) ensures the education of the nation's disabled children. As a condition of receiving IDEA funds, states must provide educational and related services that facilitate learning to students with disabilities based on their individual needs. The Department of Education (Education) is responsible for ensuring state compliance with the law. In recent years, questions have been raised about Education's oversight of IDEA.

GAO agreed to determine how Education monitors state compliance with IDEA for children aged 3-21, the extent and nature of noncompliance found, and how Education has ensured that noncompliance is resolved once identified. GAO analyzed Education monitoring documents, interviewed state and federal officials, and visited 5 state special education offices.

What We Recommend

GAO recommends that the Secretary of Education issue guidance to states for collecting data on key outcome measures. GAO also recommends that the department improve response times throughout the monitoring process and impose realistic timeframes and firm deadlines for remedying noncompliance. Education disagreed with one recommendation and was not explicit about its intentions for the others.

www.gao.gov/cgi-bin/getrpt?GAO-04-879.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Mamie Shaul at (202) 512-7215 or shaulm@gao.gov.

SPECIAL EDUCATION

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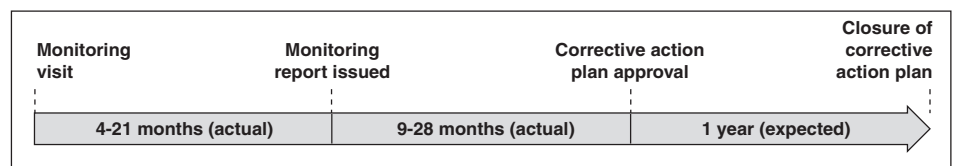
What GAO Found

To monitor compliance with IDEA provisions that affect children aged 3-21, Education annually reviews special education data submitted by all states and uses a risk-based approach to identify those states in need of further inspection. This monitoring system relies upon collaboration with states, as each state is responsible for assessing and reporting its performance on the provision of special education services. However, some of the data used by Education, such as information about how parents are included in their children's education and students' experiences after they leave school, are weak in that they are not uniformly measured or are difficult for states to collect.

In states Education visited for further inspection from 1997-2002, the department identified roughly equal amounts of noncompliance for failing to adequately provide services to students as noncompliance for not adhering to IDEA's procedural regulations, according to GAO analysis. Education found a total of 253 compliance failures in 30 of the 31 states visited during this period, with an average of approximately 8 across the 30 states. GAO found 52 percent of compliance failures to be directly related to providing student services, for instance counseling and speech therapy. The remaining 48 percent involved a failure to meet certain IDEA procedural requirements.

Once deficiencies were identified, Education has sought resolution by providing states with technical assistance and requiring them to develop corrective action plans that would ensure compliance within 1 year. However, GAO found that most cases of noncompliance had remained open for 2 to 7 years before closure, and some cases still remain open. GAO's examination of Education documents showed that a considerable amount of time elapsed in each phase of the correction process, including Education's issuance of noncompliance findings and approval of correction plans, as shown in the following figure.

Time Taken to Complete Phases of Correction Process



Source: GAO analysis of Education data.

On occasion, Education has also made use of sanctions to address longstanding issues with noncompliance, but in these cases, too, resolution has been protracted. States expressed concerns about the standard 1-year timeframe Education imposes for correction, and Education officials acknowledged that it is sometimes not feasible for states to remedy noncompliance and demonstrate effectiveness in that length of time.

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Abbreviations

| | |
|-------|--|
| CIFMS | Continuous Improvement and Focused Monitoring System |
| IDEA | Individuals with Disabilities Education Act |
| IEP | Individualized Education Program |
| NCLBA | No Child Left Behind Act |
| OSEP | Office of Special Education Programs |

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G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

September 9, 2004

The Honorable Edward M. Kennedy
Ranking Minority Member
Committee on Health, Education,
Labor and Pensions
United States Senate

Dear Senator Kennedy:

In the 2003-2004 school year, states received more than \$9 billion under the Individuals with Disabilities Education Act (IDEA) toward educating the approximately 6.5 million eligible children aged 3–21 with disabilities in the United States. IDEA funds are used to provide both educational services and related services, such as counseling, speech pathology, and occupational therapy, that facilitate learning. As a condition of receiving IDEA funding, states agree to comply with certain requirements regarding the educational and related services provided to disabled children. These requirements include the development of an individualized education program (IEP) that outlines the specific services to be provided to each student based on individual needs. For students over the age of 14, IEPs must include a statement of transition services to be provided to students to help them obtain the educational and vocational skills needed to improve the likelihood of self-sufficiency once they leave school. Similarly, infants and toddlers served under the act must have individualized family service plans in place that include steps to be taken to support the child's transition to preschool or other services.

When IDEA was reauthorized in 1997, Congress placed a new emphasis on state and local accountability for complying with IDEA and improving educational outcomes, such as graduation and other measures of postsecondary success, for disabled students. The reauthorized law made each state's annual federal funds conditional on its success in providing a free appropriate public education in the least restrictive environment. States were also required to establish goals for student performance and to provide the Department of Education (Education) with progress measures toward accomplishing those goals. With the enactment of the No Child Left Behind Act (NCLBA) of 2001, Congress further emphasized states' obligations to educate disabled children by requiring them to fully include disabled children in statewide achievement systems. With few exceptions, disabled students are to be assessed against the same state

academic standards as nondisabled students, their aggregated scores are to be publicly reported, and schools are to be held accountable for their performance.

Education has responsibility for oversight of IDEA and for ensuring that states are complying with the law. Education both provides states with technical assistance in implementing IDEA and monitors their compliance with its requirements. However, questions have been raised about the effectiveness of Education's oversight. Specifically, concerns have been raised that Education has not held states accountable for ensuring that students with disabilities receive the services to which they are entitled and that Education's efforts to remedy noncompliance have been ineffective. In response to these concerns, you asked us to examine Education's oversight of IDEA, focusing on Part B, which provides services to children age 3-21. Our review did not include Part C of IDEA, which provides services to infants and toddlers from birth up to age 3. This report presents information on (1) how Education monitors state compliance with IDEA, (2) the extent and nature of noncompliance in those states Education selected for review, and (3) the measures Education has used to remedy noncompliance with IDEA and the results of those measures.

To address these study objectives, we analyzed Education monitoring reports, documents, and guidance issued to states. We interviewed department officials and examined available documentation on Education's current monitoring system, instituted in 2003, as well as its previous systems. Specifically, we reviewed the monitoring reports of the 31 states, territories, and other jurisdictions¹ for which Education had most recently completed monitoring visits, which took place from 1997-2002. We analyzed Education's findings of noncompliance in these states and categorized them as service-related, if the failure directly affected the provision of an IDEA-required educational service, or procedural-related, if the infraction involved a more process-oriented failure. In cases where Education found noncompliance, we analyzed enforcement documents, such as corrective action approval letters, evidence submitted by states demonstrating compliance, and correspondence from Education acknowledging when noncompliance had been resolved. In cases where noncompliance resulted in sanctions, we reviewed departmental

¹Hereafter, we will use the term "states" to refer to states, U.S. territories, the District of Columbia, and the U.S. Bureau of Indian Affairs.

enforcement documents, including special condition letters and compliance agreements, from 1994–2003. This longer period of review enabled us to obtain a more comprehensive view of Education’s use of sanctions for resolving noncompliance. Additionally, we conducted site visits to 5 states—California, Georgia, Kansas, New Jersey, and Texas—that were selected to reflect differences in such factors as special education population size, previous noncompliance issues, date of last monitoring visit, and geographic location. In each state we analyzed state monitoring documents and interviewed state special education officials and members of the special education community, including administrators, parents, and advocates, who were involved in the monitoring process. Furthermore, we interviewed federal officials regarding the monitoring and enforcement process, as well as representatives from the National Council for Disability and national education organizations.

We conducted our work between September 2003 and August 2004 in accordance with generally accepted government auditing standards. Appendix I explains our methodology in greater detail.

Results in Brief

Education monitors all states for IDEA compliance through a review of state performance reports and uses a risk-based approach to select some states for further inspection each year; however, some data used to make these selections are weak. Education’s monitoring system relies upon collaboration with states, as each state is responsible for collecting information about its own special education programs in particular topic areas, assessing its performance, and reporting its findings to the department annually. Using the data states reported, Education reviews state performance in those areas it considers most closely associated with improving students’ educational outcomes, such as increased parental involvement and placement in regular educational settings, rather than on more process-oriented IDEA requirements. According to Education, the department selects a limited number of states for on-site inspection based on selected measures, such as graduation rates and dropout rates. Because Education relies heavily on state-reported data, it has taken steps in recent years to ensure that states have adequate systems in place to collect and report special education data. Despite these efforts, some of the data elements Education uses to make monitoring decisions are weak. For example, graduation rates are not uniformly collected or reported. Similarly, information about parent involvement and student transitions into elementary school and post-secondary programs are difficult to collect and are, therefore, reported inconsistently across states. Education officials acknowledged that the variability in state reported data has

limited their ability to make comparisons across states. Officials in some states we visited attributed these variations in part to inadequate guidance from Education and asked for more guidance on these measures. Inconsistent reporting of state data could negatively affect Education's ability to focus its monitoring activities on those states with the greatest deficiencies.

Cases of noncompliance identified by Education were about equally related to state failure in providing disabled students with services and failure in meeting IDEA procedural requirements, according to our analysis of state monitoring reports issued between 1997 and 2002. Education found a total of 253 compliance failures in 30 of the 31 states that it visited during this period, with an average of 8 across the 30 states. Slightly more than half of Education's findings were for failure to provide a service or facilitate the provision of a basic service to a student with disabilities. Most commonly cited was the failure to ensure related services that facilitate learning, such as counseling, speech pathology, and assistive technology. The remaining noncompliance findings Education identified involved a failure to meet certain procedural requirements under IDEA, such as failing to complete paperwork or to meet timeliness requirements.

Education has endeavored to bring states into compliance through state corrective action plans and technical assistance, but cases of noncompliance have generally continued for years before being fully resolved. To resolve the range of deficiencies Education identified in its monitoring visits, the department required states to (1) develop corrective action plans, (2) institute remedies, and (3) demonstrate the effectiveness of the remedy within 1 year. We found that all of the 7 cases of noncompliance from 1997 to 2002 that have been fully resolved took from 2 to 6 years for closure to occur, and the remaining 23 cases—some dating back as far as 1997—have still not been completely resolved. However, Education officials told us that most of these states are making progress. Our examination of Education documents showed that each phase of the monitoring and correction process took a considerable amount of time, including Education's issuance of its findings report and the approval of the state correction plan. On average, Education took about a year to issue a monitoring report following its site visits, and generally 1 to 2 years passed before states' corrective action plans were approved. Infrequently, in cases of serious or longstanding noncompliance, Education has taken more severe action by using sanctions such as making grant renewals conditional on correcting noncompliance, but resolution has been slow in these cases as well. In addition, states that we examined rarely resolved

noncompliance within the 1-year compliance deadline specified by Education for correction. State officials raised concerns about this 1-year time period, and Education officials acknowledged that resolution could be difficult to accomplish and substantiate within a 1-year period for some deficiencies. Education officials explained that the nature of some problems, for example personnel shortages, requires longer-term solutions. In such cases, Education may pursue 3-year compliance agreements that allow states to plan their remedial actions over a longer period.

To improve special education monitoring, we are recommending that Education develop additional guidance for collecting data on key outcome measures. To strengthen enforcement of IDEA, we are recommending that Education improve its response times throughout the monitoring process and that it impose realistic timeframes and firm deadlines for remedying findings of noncompliance, including making greater use of compliance agreements when appropriate.

In its comments on a draft of this report, Education expressed general agreement with the deficiencies we found and asserted its belief that changes made to the monitoring system in the past few years have already begun to effectively address these deficiencies. The department discussed a variety of actions it was taking but did not explicitly agree or disagree with most of our specific recommendations. Because we could not determine whether the actions Education discussed will result in the needed improvements, we did not delete these recommendations. In the case of our recommendation about compliance agreements, Education disagreed, saying that the department lacks the authority to initiate them because the compliance agreement process is voluntary on the part of the states. While we agree that Education cannot compel states to enter into these agreements, we continue to believe that Education does have the authority to initiate compliance agreements and that this action could result in beneficial outcomes.

Background

IDEA is the primary federal law that addresses the special education and related service needs of children with disabilities, including children with specific learning disabilities, sensory disabilities, such as hearing and visual impairments, and other disabilities, such as emotional disturbance and speech or language impairments. The law requires states to provide eligible children with disabilities a free appropriate public education in “the least restrictive environment,” that is, in an educational setting alongside nondisabled children to the maximum extent appropriate.

School districts are responsible for identifying students who may have a disability and evaluating them in all areas related to the suspected disability. In addition, they must re-evaluate children at least once every 3 years, or sooner if conditions warrant a re-evaluation, or if the child's parents or teacher requests a re-evaluation. Under IDEA, students receive special education and related services tailored to their needs through an IEP, which is a written statement developed by a team of educational professionals, parents, and interested parties at meetings regarding the child's educational program.²

If the IEP team determines the child needs extended year services, schools are required by regulations governing IDEA to provide such services beyond the normal school year. Further, the act requires that states have in place a comprehensive system of personnel development designed to ensure an adequate supply of special education, regular education, and related services personnel to provide needed services.

IDEA seeks to strengthen the role of parents and ensure they have meaningful opportunities to participate in the education of their children. In particular, IDEA regulations require that parents receive prior notification of IEP meetings and that the meetings be scheduled at a mutually agreed upon time and place. The act affords parents other procedural safeguard protections, such as the opportunity to examine their child's records and to present complaints relating to the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education.³ Under IDEA, disputes between families and school districts may be resolved through due process hearings, state complaint procedures, or mediation.

²IDEA requires that the IEP team include (1) the child's parents; (2) at least one of the child's regular education teachers, if the child is participating in the regular education environment; (3) at least one special education teacher, or if appropriate, at least one provider of the child's special education; (4) a representative of the public agency qualified to provide, or supervise, special education and who is knowledgeable about the general curriculum and the resources available from the public agency; (5) an individual who can interpret the instructional implications of educational results; (6) at the discretion of the parent or the agency, other individuals with knowledge or expertise about the child; and (7) the child, if appropriate.

³The procedural safeguards afforded parents include written prior notice whenever Education proposes to initiate or change, or refuses to initiate or change, the identification, evaluation or educational placement of the child, and the provision of a free, appropriate, public education to the child.

The Department of Education's Office of Special Education Programs (OSEP) is responsible for administering IDEA. Education authorizes grants to states, supports research and disseminates best practices, and provides technical assistance to states in implementing the law. Education is also responsible for monitoring states' compliance with IDEA requirements and ensuring that the law is enforced when noncompliance occurs. Education reviews states' systems for detecting and correcting noncompliance in the state, including noncompliance at the local level. In the event of noncompliance, Education has the specific authority to employ six sanctions: (1) imposing restrictions or "special conditions" on a state's IDEA grant award;⁴ (2) negotiating a long-term compliance agreement with a state requiring corrective action within 3 years; (3) disapproving a state's application for funds when the application does not meet IDEA eligibility requirements; (4) obtaining a "cease and desist" order to require a state to discontinue a practice or policy that violates IDEA; (5) withholding IDEA funds in whole or in part depending on the degree of the state's noncompliance; and (6) referring a noncompliant state to the Department of Justice for appropriate enforcement action.⁵

Education's system for monitoring state compliance with IDEA has been evolving for more than 5 years. This evolution is, in part, in response to the stronger accountability and enforcement provisions⁶ in the 1997 amendments to IDEA that emphasized the importance of improving educational outcomes for disabled children, including improving high school graduation rates, increasing placement in regular education settings, increasing participation in statewide and districtwide assessment programs, and improving the outcomes of services provided to students with emotional and behavioral disorders. In 1998, Education implemented the Continuous Improvement Monitoring Process, which focused its monitoring efforts on states with the greatest risk of noncompliance and placed increased responsibility on states for identifying areas of weakness. In 2003, Education implemented the Continuous Improvement and

⁴The special conditions require correction of noncompliance during the 1-year grant period.

⁵Education must provide the state education agency with reasonable notice and the opportunity for a hearing before withholding funds, disapproving a state's grant application, seeking a cease and desist order, entering into a long-term compliance agreement, or making a referral to Justice. According to Education, the type of hearing will differ depending on which enforcement action is proposed.

⁶The 1997 amendments authorized the Education, at its discretion, to withhold part of a state's IDEA funding, instead of just the entire grant. Additionally, the amendments established the authority for Education to refer noncompliant states to Justice.

Focused Monitoring System (CIFMS), which, among other things, added new state performance reporting requirements to its monitoring system. Officials of some special education advocacy groups with whom we spoke, including the National Association of State Directors of Special Education, commented favorably on these changes. However, the National Council on Disability, which had published a 2000 study critical of Education's enforcement of IDEA, continued to question whether Education has taken effective actions to remedy the problems reported.⁷

To Monitor Compliance with IDEA, Education Uses a Risk-Based System That Relies Upon State-Provided Information

Education uses a risk-based system to focus its monitoring efforts, but some data it uses are weak. Education's monitoring system relies upon states to collect information about their special education programs, assess their own performances, and report these findings to the department annually. In addition, the department selects a limited number of states for further inspection based on a subset of measures. Because this system relies heavily on state data, the department has taken steps in recent years to ensure that states have adequate data collection systems in place. However, some of the data are not uniformly measured or are difficult for states to collect. Education officials acknowledged that data variability limits the usefulness of the reported information. Some officials in states we visited attributed these variations in data in part to inadequate guidance from Education and expressed a desire for more direction on how to measure and report these data.

States Conduct Their Own Performance Reviews and Submit Annual Reports to Education

To assess their own IDEA compliance, states conduct annual special education performance reviews and report their findings to Education. To conduct these reviews, states have undertaken a variety of activities. In particular, states collect data from local districts, including local graduation rates, student placement rates, and parental involvement information, and analyze these data to identify areas of noncompliance at the local level. Additionally, states obtain input from the public about local special education programs through hearings and surveys. States also review dispute resolution processes, including state complaint systems, to determine the type of problems generating complaints and ensure that complaints are being resolved in a timely fashion. In recent years,

⁷*Back to School on Civil Rights*, National Council on Disability, Jan. 25, 2000. The National Council on Disability is an independent federal agency that makes recommendations to the President and Congress on disability-related issues.

Education has required states to include groups of stakeholders in the review process, such as parents, advocates, teachers, and administrators from the special education community. State and local officials work with these stakeholders to identify areas in which they may be out of compliance and create detailed improvement plans to remedy these problems. Several state officials we interviewed said the inclusion of stakeholders has been an improvement in the self-evaluation process. For example, officials in Texas told us that working with stakeholders has helped them better understand the severity of particular problems and subsequently has helped position the state to respond to these problems more efficiently. Upon completing the review process, states are required to create detailed improvement plans to address identified deficiencies, which are submitted to Education annually along with the results of their self-reviews through a uniform reporting format. Education implemented this uniform reporting format in recent years to streamline its review process, thereby improving the department's ability to identify data gaps.

Education Reviews State-Reported Data to Identify Those States Most Likely to Need More Oversight and Assistance

Education reviews state-reported data to assess states' improvement efforts and identify those states most in need of further monitoring and assistance. In recent years, the department has required states to report on those requirements it considers most closely associated with student results, a narrower array of issues than the department previously monitored.⁸ These data are focused on performance in five general categories: (1) the provision of educational services in the least restrictive environment, (2) state supervision of IDEA programs, (3) facilitation of parental involvement, (4) student transitions from early childhood programs, and (5) student transitions into post-secondary programs. Education has required states to supply a variety of data for each of these categories. For example, under the state supervision category, states report information regarding the resolution of formal complaints, due process safeguards for students and parents, special education personnel requirements, as well as other supervision data. Officials in 4 of the 5 states we visited said that Education's narrowed focus has improved the

⁸States are not required to report procedural data to Education that are not closely related to student performance, such as information about the distribution of procedural safeguard notices, local education agencies' applications for state grants, and compliance with IDEA confidentiality provisions. States are required, however, to monitor state systems in these procedural areas to ensure that states and localities are in full compliance with IDEA regulations.

monitoring process by concentrating attention on those areas most likely to affect results for children.

Education evaluates the collected data for each state in several ways, including assessing how the measures have changed over time and comparing data for special education students to those for general education students. Education has identified areas of IDEA noncompliance through these screens. For example, based on its data review Education can determine if states have been resolving complaints within IDEA-established guidelines or whether waiting lists have been preventing students from receiving IDEA-guaranteed services.

Additionally, according to Education, the department uses selected measures, such as state-reported data on graduation rates, dropout rates and rates of placement in various educational environments⁹ to determine which states warrant further monitoring and intervention activities, including onsite visits.¹⁰ States that rank low relative to other states on these measures may be selected. In conducting site visits, Education reviews state records, makes visits to selected districts for on-site examination of student records, and assesses state special education systems, such as complaint systems and student assessment programs. Following these visits, Education issues a report of findings and, when noncompliance is found, requires states to produce a corrective action plan.¹¹ Education policy tells states to implement a remedy and provide evidence of its effectiveness within 1 year of Education approving the state corrective action plan. As shown in figure 1, Education carried out monitoring visits in 31 different states between 1997 and 2002, visiting between 2 and 8 states per year.

⁹Measures of various educational environments are related to IDEA's requirement that children with disabilities be educated in the least restrictive environment, that is, educated with nondisabled children to the maximum extent appropriate. IDEA requires states to report these data, as well as graduation and dropout rates.

¹⁰Under Education's current monitoring system, CIFMS, these visits will be called "focused monitoring visits" because they will focus on specific critical indicators of performance, such as measures of various educational environments.

¹¹Plans addressing noncompliance may be called either corrective action plans or improvement plans. According to Education officials, corrective action plans address only noncompliance, while improvement plans address noncompliance, as well as other performance issues.

While Education Has Taken Steps to Improve States' Data Reporting Systems, Some State Performance Measures Are Weak

Because Education has relied heavily on state-reported data, it suspended its usual monitoring visits in 2003 in order to conduct visits to verify the reliability of state systems for collecting and reporting special education data.¹² After reviewing selected data from all states, Education selected 24 states for onsite examination of their data collection procedures and protocols.¹³ Following the data verification visits, the department provided states with technical assistance to address any identified deficiencies. According to Education documents, most of the visited states had data collection systems in place, several of which were of high quality; however, some states needed to better monitor the accuracy of their data and train their data entry personnel. Education officials said that selected states will receive monitoring visits in the fall of 2004.¹⁴

While Education has facilitated improvements in state data collection systems, some of the data are weak. Education has allowed states flexibility in measuring and reporting some performance measures used for site visit selection, such as graduation rates and dropout rates; consequently these data have not been calculated in a uniform manner across states.¹⁵ For example, special education students in Arkansas may receive a standard diploma even if they have not met regular graduation requirements, while special education students in Delaware must meet regular graduation requirements to graduate with a standard diploma. State education officials we talked with said that comparisons of these rates might not be valid because of the wide disparity in how graduation rates are measured and, therefore, should not be used by Education to make judgments about the relative performance of states.

Other types of information that Education has used to evaluate state's performance, such as student transitions and parental involvement, are weak because they have been difficult to gather or because states have been unclear about how to measure them. States have used a variety of

¹²Education officials told us that they do not specifically look for noncompliance during data verification visits, but if noncompliance is detected they address it.

¹³Seventy-five percent of the 24 states were selected for site-visits because the results of the audits revealed potential data collection problems, while the remaining 25 percent were randomly selected.

¹⁴These are the focused monitoring visits mentioned previously.

¹⁵For more information on variations in school dropout rates, see *GAO, School Dropouts: Education Could Play a Stronger Role in Identifying and Disseminating Promising Prevention Strategies*, GAO-02-240 (Washington, D.C.: Feb. 1, 2002).

methods to report these data; consequently, Education has not compared states' performance in these areas. Officials in all 5 states we visited noted that student transitions data were particularly difficult to collect because several different agencies were involved in the process and it was often difficult to track students once they left school. Officials in 4 of the 5 states we visited also expressed confusion about how to report parental involvement. For example, officials in one state were unclear about whether they should report the percent of parents notified of meetings or the percent of parents who attended meetings, while officials from another state believed that the measures they used to report parent involvement did not adequately describe parent involvement.

Officials in 2 of the 5 states we visited attributed their difficulty in collecting and reporting these measures in part to inadequate guidance from Education, and officials in 3 of the 5 states we visited expressed a desire for greater guidance from the department on how to collect and measure these areas. In our review of Education guidance, we found the direction provided to states in terms of what to measure and report to Education in these areas was vague, as Education does not specify how states should demonstrate performance. For example, Education provides states with 17 potential sources for indicators to measure student transitions into postsecondary programs but does not specify which of these indicators should be reported to Education in annual reports.

Education officials with whom we spoke acknowledged difficulties with student transition and parent involvement data and said that they are taking steps to improve data quality. To help address data deficiencies, Education has funded the National Center for Special Education Accountability Monitoring, which assists states, local agencies, and the department in the development of data collection systems.¹⁶ In working with state special education directors, special education advocates, Education officials, and others, the center has found that reliable data sources often do not exist for several of the data elements collected by Education.

¹⁶As of July 2004, the center is working with approximately half of all states, including 2 of the 5 states we visited.

Noncompliance Education Found Was about Equally Split between Failures Involving Services to Students and Procedural Deficiencies

Our analysis of Education monitoring reports for states visited between 1997 and 2002 showed that failures directly affecting services to children were about as common as failures involving violations of procedural requirements.¹⁷ Education identified a total of 253 noncompliance findings in 30 of the 31 states visited during this period, with an average of approximately 8 findings per state. Our analysis showed that 52 percent of the findings involved state failures to directly ensure that students were receiving required special education services. As shown in table 1, the most common finding of service noncompliance was failure to adequately provide related services intended to assist learning, such as counseling, speech pathology, and assistive technology. Another common deficiency Education cited was failure to adequately outline the activities and training planned to prepare a student for life after exiting school. Of the 12 states that were cited for not having adequate special education or related services personnel, some acknowledged that a personnel shortage had prevented them from always making timely evaluations, which could have resulted in delayed services, late placement decisions, and limited provision of extra help that would be needed to teach special education students in regular education settings.

¹⁷For our analysis, we defined a service compliance issue as an activity that directly provides the student with a basic service required by IDEA or an activity that will immediately facilitate the provision of a basic service required by IDEA. A procedural compliance issue was defined as an activity that meets a process-oriented requirement of IDEA. While the implementation of these process-oriented requirements might improve the special education program immediately or over time, the activity or process does not directly provide or immediately facilitate a basic service to a student.

Table 1: Most Commonly Cited Noncompliance Findings Related to the Provision of Services in Education Monitoring Reports, 1997-2002

| Number of states cited | Noncompliance related to the provision of services |
|-------------------------------|--|
| 24 | Related services, such as counseling, speech pathology, and assistive technology, were not ensured or adequately provided. |
| 17 | Student transition statements were inadequate or missing. |
| 14 | Student placement in the least restrictive environment was not ensured. |
| 13 | Extended school year activities were not ensured. |
| 12 | Lack of personnel. |
| 4 | Regular education settings lacked accommodations and/or supports. |
| 4 | Timely evaluation of student needs was not ensured, resulting in delay of services. |

Source: GAO analysis of Education data.

The remaining 48 percent of Education’s findings were for compliance failures that we classified as procedural in nature, that is, activities that did not directly provide or immediately facilitate a service to students. According to our analysis, Education’s most common finding of procedural noncompliance with IDEA was failure to invite some of the appropriate parties to student transition meetings where parents, school personnel, department representatives, and the students themselves determined what educational and vocational training they would need before they left school. Other procedural failures, shown in table 2, often involved the completeness of paperwork or timeliness of meeting other IDEA requirements. For instance, the department found that in several states, notices sent to parents regarding upcoming IEP meetings related to student transition did not include required information such as the purpose of the meeting and the list of who was invited. Similarly, some states did not produce written complaint decisions in a timely manner that outlined how complaints were resolved.

Table 2: Most Common Findings of Procedural Noncompliance in Education Monitoring Reports, 1997-2002

| Number of states cited | Noncompliance related to procedural requirements |
|-------------------------------|--|
| 16 | Agencies and/or students not invited to IEP meetings related to student transitions. |
| 12 | States did not ensure that local education agencies corrected noncompliance. ^a |
| 11 | Complaints were not adequately resolved within timelines. |
| 11 | Incomplete notice provided to parents regarding IEP meetings related to student transitions. |
| 10 | States did not identify local education agencies' noncompliance. |
| 5 | Assessment modifications not adequately provided. |

Source: GAO analysis of Education data.

^aWe could not determine from Education documents whether the underlying compliance problems that the local education agencies failed to identify or correct were service-oriented or procedural in nature. For this analysis, we classified these failures to identify or correct deficiencies as procedural.

Education Has Sought to Bring States into Compliance by Providing Technical Assistance and Requiring Corrective Action Plans, but Resolution Has Been Prolonged

When Education has identified noncompliance, it typically has offered technical assistance to states and required them to create corrective action plans; however, states have generally not resolved the noncompliance in a timely manner. Most cases of noncompliance have remained open for several years before closure, and some cases dating back as far as 1997 have not yet been completely resolved. Education's process for correcting deficiencies consisted of several phases, each of which took a considerable amount of time to complete. For example, on average, 1 year elapsed from Education's monitoring visit to issuance of its report findings. The department has also made limited use of sanctions to address longstanding issues with noncompliance, but in these cases, too, resolution has been protracted. Further, we found that the 1-year compliance deadlines specified by Education were often missed. State officials commented, and Education officials confirmed, that this standard 1-year timeframe for correction may not, in some cases, provide an adequate period of time in which to implement a remedy and demonstrate its effectiveness. To address noncompliance situations that are expected to take more than 1 year to correct, 3-year compliance agreements may allow states to plan their remedial steps over a longer period.

To Effect Compliance, Education Typically Provided Technical Assistance and Required State Correction Plans, but Most Cases of Noncompliance Remained Open for Years without Resolution

To resolve the deficiencies identified in 30 of the 31 states visited from 1997-2002, Education offered technical assistance to states and required them to develop corrective action plans and submit them to the department for approval. The department assisted states in achieving compliance through informal guidance and, in some cases, follow-up visits to confirm states' actions. Education officials answered questions regarding policies and best practices as well as referred states to regional resource centers and other technical assistance providers if needed. Also, Education required states to create corrective action plans and submit them to the department for review and approval. The plans were expected to include strategies to remedy deficiencies and demonstrate the effectiveness of the remedy within a year of the approval date of the plan. For example, Maryland was cited for failure to ensure that students with disabilities were educated in regular education settings to the maximum extent possible. To address this violation, one of the steps in the state's correction plan was to create professional development activities and training materials that emphasized inclusiveness and making appropriate placement determinations. During the 1-year period of correction, states were required to submit periodic updates to document evidence of improvement for Education's review.

Although corrective action plans have a 1-year timeframe for completion according to Education policy, our analysis showed that most cases of noncompliance addressed through this method remained open for years. We found that only 7 of 30 states with findings of noncompliance visited from 1997 to 2002 had completely resolved their deficiencies as of May 2004.¹⁸ Closure of these cases, that is resolution of all deficiencies, took from 2 to 7 years from the time the deficiencies were first identified during a monitoring visit. Of the remaining 23 cases, about half have been unresolved for 5-7 years. Education officials told us that for almost all of these outstanding cases, states have made progress toward correcting the noncompliance, and 11 states are close to completion. Table 3 lists the dates of Education's monitoring visits, reports, and case closures for the 31 states monitored in the time period 1997 to 2002.

¹⁸We could not determine from the documentation Education provided the nature of the issues that remain unresolved in the 23 states that have not yet closed their findings of noncompliance. For the 7 states that have closed their findings of noncompliance, Education issued letters to the states indicating that all issues of noncompliance had been addressed.

Table 3: Results of Education Monitoring Visits, 1997–2002

| State | Date monitored | Date monitoring report issued | Date noncompliance was closed |
|--|----------------|-------------------------------|-------------------------------|
| Connecticut | 2-3-97 | 6-11-97 | 2-99 |
| Commonwealth of Northern Mariana Islands | 3-6-97 | 7-21-97 | Not yet closed |
| American Samoa | 3-10-97 | 7-25-97 | Not yet closed |
| Missouri | 4-28-97 | 1-8-98 | 5-04 ^a |
| Oregon | 4-28-97 | 1-8-98 | 5-03 |
| Virgin Islands | 5-19-97 | 6-29-98 | Not yet closed |
| California | 6-8-98 | 4-6-99 | 7-02 |
| North Dakota | 9-21-98 | 9-14-99 | 5-04 |
| Nebraska | 10-5-98 | 4-19-00 | 3-04 |
| Washington | 10-5-98 | 12-22-99 | Not yet closed |
| Arizona | 1-25-99 | 5-22-00 | Not yet closed |
| New Mexico | 12-7-98 | 1-7-00 | Not yet closed |
| Utah ^b | 12-7-98 | 12-2-99 | Not Applicable |
| Massachusetts | 4-6-99 | 6-21-00 | Not yet closed |
| Wisconsin | 2-22-99 | 10-18-00 | Not yet closed |
| Montana | 4-12-99 | 4-7-00 | 12-03 |
| South Dakota | 5-17-99 | 12-20-99 | Not yet closed |
| Bureau of Indian Affairs | 5-17-99 | 4-20-00 | Not yet closed |
| Ohio | 10-18-99 | 3-30-01 | Not yet closed |
| Maryland | 10-25-99 | 7-26-01 | Not yet closed |
| Arkansas | 1-10-00 | 8-25-00 | Not yet closed |
| Colorado | 1-10-00 | 3-30-01 | Not yet closed |
| Louisiana | 2-14-00 | 7-20-01 | Not yet closed |
| Florida | 2-28-00 | 4-23-01 | Not yet closed |
| New Jersey | 9-25-00 | 9-14-01 | Not yet closed |
| Pennsylvania | 10-23-00 | 2-1-02 | Not yet closed |
| Hawaii | 2-12-01 | 6-5-02 | Not yet closed |
| District of Columbia | 3-26-01 | 6-18-02 | Not yet closed |
| South Carolina | 2-11-02 | 1-6-03 | Not yet closed |
| Illinois | 4-22-02 | 12-31-02 | Not yet closed |
| Texas | 5-6-02 | 3-10-03 | Not yet closed |

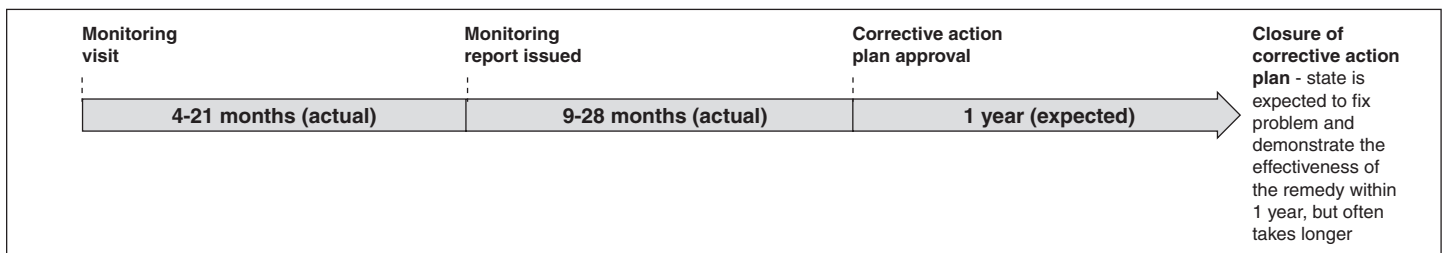
Source: GAO analysis of Education's Web site, documents, and interviews with department officials.

^aEducation was not able to provide documentation of the closure date, but agency comments showed a closure date May 2004.

^bUtah did not have any findings of noncompliance.

In analyzing the time taken to correct noncompliance, we found that the correction process consisted of two phases, each of which frequently took a year or more to complete, as shown in figure 2. The first phase, Education’s issuance of a findings report following its monitoring visit, took a year on average, with a range of 4 to 21 months. Officials in the 3 states we visited that were monitored since 1997 expressed concern about the timeliness of Education’s monitoring reports. Officials from 2 of these states said that the reports contained out-dated information that did not reflect the current environment in the state. In addition, state officials in 1 state said that they delayed the development of their corrective action plans until they received Education’s findings report. Education officials told us that staffing constraints and multiple levels of report review contributed to the delays in issuing reports, but they did not provide a goal of reducing the time needed to issue reports. Second, the time from report issuance to approval of the corrective action plan generally took an additional 1 to 2 years. During this time period, states produced an initial corrective action plan that they revised, if needed, based on review and feedback from Education.¹⁹ Education officials acknowledged that this approval process can be lengthy, but have indicated they are working to reduce the period for corrective action plan approval to 6 months.

Figure 2: Time Taken to Correct Noncompliance through Technical Assistance and Corrective Action Plans



Source: GAO analysis of Education data.

¹⁹In the 12 cases where Education’s documentation included dates needed to calculate this period of time, states took from 2 to 18 months to submit the initial corrective action plan.

Enforcement Actions Have Been Taken Infrequently; Resolutions Were Protracted

Although most instances of noncompliance were addressed without more severe actions taken, occasionally Education took measures beyond technical assistance and corrective action plans by imposing sanctions on states. During the 10-year period from 1994 to 2003, Education used three types of sanctions— withholding of funds, special conditions, and compliance agreements. Withholding of all grant funds was attempted once by Education, but the state successfully challenged Education’s action in court and receipt of the grant was not interrupted. The most commonly used sanction was special conditions put on states’ annual grants stipulating that the problem must be resolved within 1 year. During the 1-year period of correction, the states continued to receive funds. In cases of noncompliance requiring longer-time periods to correct, an additional tool available to Education was a compliance agreement, which allowed a state 3 years in which to correct the noncompliance while also continuing to receive funds. Compliance agreements were used only for the Virgin Islands and the District of Columbia. Education officials told us that compliance agreements were used infrequently because they are voluntary and states must agree to the arrangement. States that entered into compliance agreements were also required to undergo a public hearing process to demonstrate that they could not completely address their violations within 1 year.

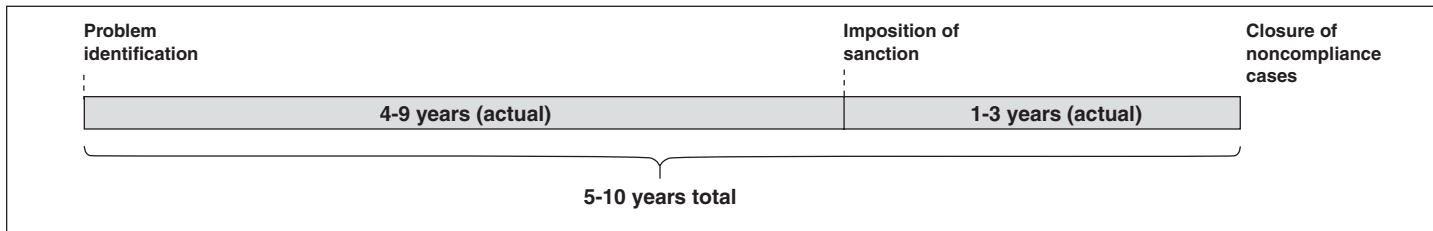
In total, Education has taken enforcement action against 33 states for noncompliance from 1994 to 2003. An action was taken against multiple states for failing to publicly report on the performance of children with disabilities on alternate assessments, as required by the 1997 reauthorization of IDEA. As a result of other compliance issues, Education has imposed 15 sanctions against 11 states in this 10-year period. Appendix II contains more details on enforcement actions taken by Education from 1994 to 2003.

Education considers a number of factors in deciding to impose a sanction, including the duration, extent, and severity of the noncompliance, as well as whether a state has made a good faith effort to correct the problem. We found that sanctions were imposed for a variety of specific deficiencies— commonly for failing to provide related services, place students in the least restrictive environment, or have an adequate state system in place for detecting and correcting noncompliance at the local level. In New Jersey, special conditions were imposed to address long-standing noncompliance involving state oversight of local special education programs. New Jersey officials told us that the enforcement action caught the attention of senior state officials and helped the special education department obtain the resources needed to correct the problem within 2 years of the imposition

of the sanction. When considering the type of sanctions to impose, Education officials told us that their primary consideration is the expected time of resolution. In cases where officials believe the problem can be addressed in 1 year, special conditions may be used. In cases where resolution is expected to take longer, 3-year compliance agreements may be pursued.

In cases involving sanctions, the resolution of compliance issues was often prolonged – generally ranging from 5 to 10 years from the time of problem identification to the imposition of the sanction to closure, as shown in figure 3. In most instances, 4 to 9 years elapsed before Education imposed sanctions,²⁰ and an additional 1 to 3 years generally passed following the sanction before noncompliance was closed. For example, Massachusetts received special conditions on its grant award in 2000 for noncompliance that was first identified in 1991. Once the special conditions were imposed, Massachusetts remedied the noncompliance in 1 year. Education officials indicated that the reason why several years often elapsed before sanctions were used was that Education preferred to work with states instead of imposing sanctions if they demonstrated good faith efforts to correct deficiencies and followed the steps outlined in their corrective action plans.

Figure 3: Time Generally Taken for Corrective Process in Closed Cases Where Sanctions Were Imposed



Source: GAO analysis of Education data.

In addition to those cases that were closed, some ongoing cases have been even more protracted. Although states that receive special conditions attached to their grants are expected to correct problems before the next grant year, in many cases problems were not fully resolved and continued for years. In these cases, states received multiple special conditions for

²⁰In the enforcement case against 28 states for failing to report publicly on alternate assessments, the sanction was imposed in a shorter period.

some of the same issues of noncompliance. For example, Pennsylvania received a special condition on its grant for 3 consecutive years beginning in 1998 before achieving compliance on all issues. At the beginning of the 1999 grant year, Pennsylvania had resolved two of the five original issues of noncompliance. Additionally, enforcement actions for California, the District of Columbia, and the U.S. Virgin Islands dating from 1997 and 1998 have not yet been completely resolved.

Compliance Deadlines Often Missed; State Officials Indicated—and Federal Officials Acknowledged—Difficulties of Meeting Timeframes

States we reviewed often did not meet the 1-year compliance deadline prescribed by Education, and state officials said that some types of noncompliance could not be corrected within 1 year, a problem that Education officials also acknowledged. Our examination of Education's records for a sample of 9 states with corrective action plans revealed that none had completely corrected their noncompliance within 1 year of approval of the plan, as required by Education.²¹ Likewise, states receiving special conditions on their grant usually did not completely resolve the noncompliance issue within 1 year, and some took numerous years to make the correction. For example, California received special conditions attached to its grant award in 2000 for various deficiencies. The state did not complete the correction of this deficiency within 1 year and as a result received an additional special conditions letter in 2001.

Regarding the 1-year deadline, Education officials told us that some states may not be able to correct deficiencies and demonstrate the effectiveness of the changes within the year required of them. In addition, they said that in many cases, a state may take corrective steps within one year but that demonstrating the effectiveness of the remedy may extend beyond 1 year. Officials in 3 states we visited also raised concerns that some types of noncompliance could not be corrected within 1 year. For example, Kansas officials said the state could not demonstrate compliance with a requirement to change an IEP component because IEPs are written year-round and thus every IEP could not be changed within the 1-year deadline. Also, Education officials we interviewed emphasized that some deficiencies take longer to correct than others. They commented that states often could correct certain procedural deficiencies within a year,

²¹We examined records for 17 states, but due to incomplete documentation and other reasons, we were able to draw conclusions about the timeliness of resolution for only 9 states.

but entrenched problems, such as personnel shortages, generally take more than 1 year to remedy.

In cases of noncompliance that require longer periods of time to correct, Education may pursue 3-year compliance agreements with states that allow the states to continue to receive funds while they are correcting noncompliance. This sanction requires states to establish interim goals and engage in longer-term planning, with specific compliance benchmarks and timelines. States that enter into compliance agreements must demonstrate at a public hearing they cannot achieve compliance within 1 year and that a 3-year time frame for correction is more appropriate. However, this option has been rarely used. One state we visited objected to a compliance agreement Education proposed. The department did not pursue the compliance agreement and, instead, imposed special conditions on the state's grant approval each year for several years. Officials from this state said that they chose not to enter into a compliance agreement because they considered the additional reporting requirements and monitoring activities it would entail to be too burdensome.

Conclusions

Education has taken steps in the right direction since 1997 in focusing its review of state support for children with disabilities on those factors that most affect educational outcomes for disabled students, such as increased parental involvement and placement in regular education settings. In recent years, Education has invested considerable effort to assist states in improving data reliability. Furthermore, by reviewing this information through the use of a uniform reporting format, Education is in a better position to make its local site visits yield improvements where they are most needed. Despite these efforts, some of the information states report about their special education programs are weak and not comparable, which limits Education's ability to select states for on-site visits that have the most pressing problems. Education made 31 site visits between 1997 and 2002, visiting no more than 8 states in any 1 year. Given such finite opportunities for inspection, it may be easy to miss areas where children are not receiving educational and related services.

Aside from targeting the right states for visits, the lengthy resolution process has been a problem in OSEP's monitoring system. In many instances, noncompliance with the requirements of IDEA has persisted for many years before correction. One reason for the delay is that Education has allowed considerable time to elapse in the initial phases of the correction process; specifically, the time from the first identification of a problem to the imposition of the 1-year time frame for correction. This

considerable delay—sometimes taking up to 21 months between problem identification and the issuance of department findings—could result in states postponing the implementation of corrective plans. Although the initial phases of the correction process can be lengthy, Education’s 1-year deadline for states to correct deficiencies is, at times, too short for states to achieve compliance. Unrealistic timeframes may both discourage states from focusing on achievable, albeit longer-term, plans for correction. These unrealistic timeframes may also lessen the impact of the enforcement action itself, as in the case where special conditions are imposed for infractions year after year with few consequences to the state, but potentially detrimental consequences to students with disabilities. The imposition of appropriate deadlines, including the more frequent use of compliance agreements that allow for better long-term planning and predictable consequences when these deadlines are not met, could motivate states to achieve compliance more quickly.

The combined effect of such prolonged reviews—lengthy timeframes for the receipt of reports and the approval of corrective action plans—and failure to hold states more firmly to a rapid resolution could directly affect the progress of some of the nation’s most vulnerable children. Without some deliberate and specific improvements to its monitoring process, Education may face difficulties in helping the nation’s disabled students realize their full potential.

Recommendations for Executive Action

We recommend that the Secretary of Education

- develop and provide states with additional guidance for collecting and reporting three measures that Education considers key to positive outcomes for students with disabilities: early childhood transitions, post-secondary transitions, and parental involvement;
- expedite the resolution of noncompliance by improving response times throughout the monitoring process, particularly in reporting noncompliance findings to states, and track changes in response times under the new monitoring process;
- impose firm and realistic deadlines for states to remedy findings of noncompliance; and
- when correction of noncompliance is expected to take more than 1 year, make greater use of Education’s authority to initiate compliance

agreement proceedings rather than imposing special conditions on grants.

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Education for review and comment. Education's written comments are reproduced in appendix III. Recommended technical changes have been incorporated in the text of the report as appropriate. The department discussed, but did not explicitly agree or disagree with two recommendations, disagreed with one recommendation, and did not directly respond to one recommendation, the recommendation regarding imposing firm and realistic deadlines.

In response to our recommendation that Education provide states with additional guidance for collecting and reporting data on student transitions and parental involvement, the department was not explicit about its intended actions. While Education agreed with the need to provide states assistance in these areas, it did not clearly indicate whether it would develop the guidance we recommended. Education said that it is funding several centers that are assisting states in collecting data in these areas. We commend Education's efforts to improve special education performance data. However, to maximize the usefulness of these efforts, the department should formalize the results of these activities in guidance. Therefore, we continue to recommend that Education develop and provide states with guidance on collecting and reporting student transitions and parental involvement data.

Regarding our recommendation to improve the department's response times throughout the monitoring process, Education acknowledged past problems with timeliness but indicated that it had made improvements in recent years. Education stressed that the reports we reviewed were based on its previous monitoring processes, rather than the current process, the Continuous Improvement and Focused Monitoring System (CIFMS). The department said that timeliness had improved in several areas. For instance, Education said that the time required to issue its data verification monitoring reports has been about 4 months and that this is a substantial improvement over the previous system. Education also said that the CIFMS is resulting in the timely receipt of and response to state improvement plans and that the department has a goal to issue responses to all plans by September 30, 2004. However, we could not determine whether, overall, Education's new CIFMS monitoring process will result in improved timeliness. Education officials told us that the data verification visits primarily focused on accuracy of state data, not detecting noncompliance. Therefore, timeliness associated with these visits may not

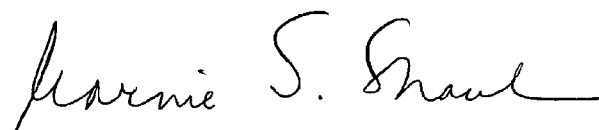
be an indication of overall improvement. In addition, the timeliness of the focused monitoring visits has not been established since they have not yet begun. We believe that Education's response times should be improved, but we could not determine the extent to which changes already made might impact timeliness. Therefore, we modified our recommendation to suggest that Education track timeframes associated with various steps in the new monitoring process to substantiate possible improvements.

In response to our recommendation that Education make greater use of its authority to initiate compliance agreement proceedings when appropriate, the department said that it cannot independently initiate these proceedings because the compliance agreement process is voluntary on the part of the states. We do not agree with this position. The relevant statute specifically authorizes the department to hold a hearing and directs it to invite certain parties, including the state. While the department cannot compel a state to enter into a compliance agreement, we think initiating proceedings to consider the merits of entering into such an agreement could likely result in beneficial corrective action discussions between the department and the state. It could also result in greater reliance on the 3-year compliance agreement or at least improve corrective action planning by the state. While Education may impose other remedies such as partial or full withholding of funding, issuing a cease and desist order, or referring a state's noncompliance to the Department of Justice, we believe that in many instances of noncompliance, the 3-year compliance agreement could be the least onerous, and perhaps most helpful, tool to improve state compliance with IDEA.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution until 30 days after the date of this report. At that time, we will send copies of this report to the Secretary of Education and the House and Senate Committees with oversight responsibility for the department. We will also make copies available to other parties upon request. In addition, the report will be available at no charge on GAO's Website at <http://www.gao.gov>.

Please contact me on (202) 512-7215 if you or your staff have any questions about this report. Major contributors to this report are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Marnie S. Shaul". The signature is written in a cursive style with a long horizontal flourish at the end.

Marnie S. Shaul
Director, Education, Workforce
and Income Security Issues

Appendix I: Scope and Methodology

As requested, our review focused on the Department of Education's monitoring of the Individuals with Disabilities Education Act (IDEA), Part B, those aspects of the law that regulate the provision of services to disabled school-aged and preschool children.¹ In conducting our review, we examined Education's monitoring procedures and guidance since Congress last amended IDEA legislation in 1997. Additionally, we examined reports submitted to Education to document compliance, including self-assessments, Section 618 data reports, and improvement plans. We also reviewed compliance and enforcement documentation and Education monitoring reports for the 31 states visited for Part B monitoring since 1997 (see below for more information). Because Education infrequently used sanctions, we examined the previous 10-year period to capture a more comprehensive picture of enforcement actions. Additionally, we conducted site visits to 5 states, where we interviewed state officials and special education experts. We also interviewed Education officials; representatives from the National Council for Disability, an independent federal agency that makes recommendations to the President and Congress on disability-related issues; and representatives from national education organizations.

We conducted our work between September 2003 and August 2004 in accordance with generally accepted government auditing standards.

Site Visits

We conducted site visits to five states – California, Georgia, Kansas, New Jersey, and Texas. States were selected for variation in the number of special education students served, geographic location, the date of their last monitoring visit, whether they had received a data verification visit, and whether they had been placed under sanctions by Education for IDEA violations since 1993. Additionally, in selecting states, we considered how states ranked on various Education risk factors, including student placement rates, graduation rates, drop-out rates, and level of state complaints. We conducted our site visits between December 2003 and March 2004.

¹The 1997 amendments organized IDEA into four parts: A, B, C, and D. Part A contains general provisions of the act, including the act's purposes and definitions. Part B contains provisions relating to the education of school-aged and preschool children, including eligibility requirements, funding formulas, and educational placement and service requirements. Part C pertains to services for infants and toddlers with disabilities. Part D concerns national activities designed to improve educational programs for disabled children.

While in each state, we analyzed state monitoring documents and met with officials at states' Departments of Education, including the State Directors of Special Education and members of their staff responsible for monitoring efforts. We interviewed these officials about their experiences with Education's monitoring processes and gathered information about the systems used by their states to monitor local compliance with IDEA. Additionally, in each state we spoke with members of the state stakeholder committees, which help state officials conduct their self-assessments and create improvement plans. Stakeholders we spoke with included parents of special education students, special education and school administrators, and special education advocates.

Monitoring Report Analysis

To determine the nature of noncompliance in those states selected by Education for review, we analyzed the reports issued by Education for the 31 Part B monitoring visits Education made between 1997 and 2002. A 2002 cut-off date was selected because at the time of our analysis, Education had not yet issued a monitoring report for the one state it visited in 2003. To analyze these reports, we reviewed the noncompliance findings cited in these reports and divided the findings into two categories; those relating to infractions that were service-related and those relating to infractions that were procedural in nature.

For our analysis, we defined a service compliance issue as an activity that directly provides the student with a basic service required by IDEA or is an activity that will immediately facilitate the provision of a basic service required by IDEA. A procedural compliance issue was defined as an activity that meets a process-oriented requirement of IDEA. While the implementation of these process-oriented requirements might improve the special education program immediately or over time, the activity or process does not directly provide or immediately facilitate a basic service to a student.

Analysis of Compliance Documentation

To determine the results of Education's efforts to remedy noncompliance, we reviewed Education documents and data pertaining to the 30 states visited between 1997 and 2002 that were cited for noncompliance in Education monitoring reports. Specifically, we analyzed the 30 monitoring reports; and available Education documents such as corrective action plans submitted by states in response to report findings; notification documents from Education approving state plans; state-submitted evidence of change in noncompliance; and, when applicable, notifications to states when noncompliance had been sufficiently addressed. To

determine the length of time it took to resolve cases of noncompliance through monitoring visits and technical assistance, we analyzed these documents for dates and deadlines. We computed the length of time for resolution from the date of the monitoring visit until the date Education documented resolution of the problem.

Analysis of Enforcement Documentation

To obtain information about Education's enforcement efforts, we reviewed all cases of enforcement action taken against states by Education from 1994 to 2003. For our review, we viewed enforcement actions as beginning at the time a sanction was first imposed, regardless of how many subsequent times a sanction was used to ultimately bring about compliance. That is, if a state received multiple sanctions for the same infraction, such as several special conditions letters in consecutive years, we viewed all of these individual enforcement actions as one action. Likewise, if a state received one 3-year compliance agreement, while another state received three consecutive special conditions letters for the same infractions, we treated both instances as one enforcement case.

For all enforcement cases, we analyzed available Education documents, such as notifications of sanctions, including state grant award letters subject to special conditions and compliance agreements; state-submitted evidence of change to demonstrate compliance; and Education's correspondence to states notifying them when noncompliance had been sufficiently addressed, thus closing the enforcement cases. Additionally, we examined past monitoring reports to determine when Education first identified noncompliance that ultimately resulted in an enforcement action. In those instances when noncompliance was not identified through a monitoring visit, we used the date of the enforcement action as the date that the noncompliance was first identified for the purposes of our analysis. In all cases, we analyzed documentation for dates and deadlines to determine the length of time it took to resolve cases of noncompliance through sanctions.

Appendix II: IDEA-Related Sanctions: 1994-2003

| State | Problem areas | Year and sanction type | Status |
|---------------------------|--|---|--|
| American Samoa | Fiscal management. | 2003–Special conditions | Not yet resolved; year has not yet expired. |
| California (3 instances) | Provision of services to incarcerated youth. | 1997–Special conditions 1998–Special conditions 1999–Special conditions 2000–Special conditions 2001–Special conditions 2002–Special conditions 2003–Special conditions | Not yet resolved. |
| | Timely resolution of complaints. | 1999–Special conditions | Resolved in 2000. |
| | General supervision; identification and correction of deficiencies, IEP violations, provision of related services and least restrictive environment. | 2000–Special conditions 2001–Special conditions | Resolved in 2002. |
| Connecticut | Ensuring ability to request due process hearings. | 2002–Special conditions | Resolved in 2003. |
| District of Columbia | Eleven areas of noncompliance, including general supervision; due process hearings; timeliness of evaluations and placements; and provision of free appropriate public education in the least restrictive environment. | 1998–3-year compliance agreement 2001–Special conditions 2002–Special conditions 2003–Special conditions | Not yet resolved. Three findings remain open in July 2003: timely implementation of hearing decisions, placement in the least restrictive environment, and timely evaluations. |
| Guam | Fiscal management. | 2003–Special conditions | Not yet resolved; year has not yet expired. |
| Massachusetts | Ensuring IEP components are determined at an IEP meeting with all required participants; placement of students in least restrictive environment. | 2000–Special conditions | Resolved in 2001. |
| New Jersey | General supervision; identification and correction of deficiencies. | 1999–Special conditions 2000–Special conditions | Resolved in 2001. |
| Northern Mariana Islands | Fiscal management. | 2003–Special conditions | Not yet resolved; year has not yet expired. |
| Pennsylvania | General supervision; identification of deficiencies; placement of students in least restrictive environment, provision of extended school year and speech services. | 1998–Special conditions 1999–Special conditions 2000–Special conditions | Resolved in 2001. |
| Puerto Rico (2 instances) | Outstanding issues from 1993 compliance agreement regarding timely evaluations and provision of services. | 1997–Special conditions | Resolved in 1998. |
| | Fiscal management. | 2002–Special conditions 2003–Special conditions | Not yet resolved. |

Appendix II: IDEA-Related Sanctions: 1994-2003

| State | Problem areas | Year and sanction type | Status |
|-----------------|--|---|---|
| Virginia | Provision of services to students with disabilities who were expelled or suspended long-term. | 1994–Attempt to withhold funds; action contingent on outcome of court case. 1995–Attempt to withhold funds; action contingent on outcome of ongoing court case. 1996–Attempt to withhold funds; action contingent on outcome of ongoing court case. | Education was ultimately unsuccessful in court and funds were not withheld. However, subsequent changes in IDEA rendered the disputed issue moot, as all states were required by statute to provide services to disciplined students. |
| Virgin Islands | Fiscal and program management; general supervision; qualified personnel; placement of students in least restrictive environment; provision of transportation services. | 1998–Special conditions 1999–3-year compliance agreement 2002–3-year compliance agreement | Not yet resolved. |
| Multiple States | Participation and reporting on alternate assessments. | 2002–Special conditions imposed against 27 states. ^a 2003–Special conditions imposed against 11 unresolved states, plus 1 additional state, Ky. ^b | Sixteen of 27 states resolved in 2003; 11 remaining states + Ky. not yet resolved. |

Source: U.S. Department of Education.

^a Ala., Alaska, Bureau of Indian Affairs, Colo., Conn., Commonwealth of the Northern Mariana Islands, Del., D.C., Guam, Hawaii, Idaho, Ill., Mass., Maine, Mich., Miss., N.J., N. Mex., N.Y., Okla., P.R., S.C., Tex., Utah, Vt., Wash, and Wis.

^b Alaska, Bureau of Indian Affairs, Colo., Commonwealth of the Northern Mariana Islands, Del., D.C., Guam, Ky., Maine, Mich., P.R., and Utah.

Appendix III: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

August 6, 2004

Ms. Marnie S. Shaul
Director, Education, Workforce and
Income Security Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Shaul:

Thank you for the opportunity to review the July 2004 draft report entitled, "Special Education: Improved Timeliness and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System" (GAO-04-879). I am pleased to respond on behalf of the Department of Education.

As noted in your draft report, the Department has "taken steps in the right direction since 1997 in focusing its review of state support for children with disabilities on those factors that most affect educational outcomes for disabled students." The Department has taken steps since the passage of the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) to improve accountability measures that drive and support increased compliance and improved results for children with disabilities. The Office of Special Education Programs (OSEP) began this process through the implementation of the Continuous Improvement Monitoring Process (CIMP) between 1998 and 2002. OSEP continues to review, revise, and improve its monitoring system and, in 2003, implemented the Continuous Improvement and Focused Monitoring System (CIFMS).

The Department believes it is important that the final report emphasize that GAO's analysis is based on reports developed under the CIMP monitoring procedures and methodology implemented between 1998 and 2002 rather than the Department's current CIFMS, which is the current process described in your report. OSEP developed and implemented the new CIFMS largely in recognition of the same deficiencies in process and timeliness noted by the GAO with the CIMP.

The CIFMS targets resources on performance issues most closely related to improved results for children with disabilities and to those States most in need of improvement on these performance issues. This targeting of resources in CIFMS enables OSEP to work with States to improve both performance and compliance. The CIFMS integrates self-assessment and improvement planning into an Annual Performance Report (APR). This integration reduces the reporting burden on States, reduces the number of OSEP responses to States, focuses OSEP resources and improves timeliness of these responses.

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OSEP also has improved its timeliness for issuing monitoring reports since implementing CIFMS. OSEP has conducted 29 verification monitoring visits under the CIFMS since 2003 and has issued 24 verification monitoring reports. The purpose of these visits is to evaluate State general supervision and assessment systems for compliance with the law and to evaluate whether State data systems are designed to produce valid and reliable information. In some cases, these visits have revealed problems in other areas as well. These visits have become an important vehicle for providing State-specific technical assistance about the issues under review. The timeline for issuing reports for these visits under the new CIFMS is an average of 4 months, a substantial improvement over the previous system.

The new CIFMS approach of incorporating improvement plans in the APRs is resulting in the timely receipt of and response to State improvement plans. We are currently reviewing the APRs that were due from each State on March 31, 2004. Our goal is to issue all responses by September 30, 2004. We have issued 9 response letters, with 40 more under development.

The Department's new CIFMS is leading to more timely correction of noncompliance. When noncompliance is identified through the verification monitoring or APR review, a State is required to submit documentation of correction within 60 days. Alternatively, if the State cannot document correction, it must submit a plan within 60 days to ensure correction within one year of OSEP's acceptance of the plan. We also are working closely with those States monitored under the CIMP with open noncompliance issues. Most of the States with outstanding noncompliance issues have made considerable progress in correcting the noncompliance. We anticipate resolving most of the noncompliance identified through the CIMP by the end of the calendar year.

You discuss the need to improve States' data reporting systems and provide technical assistance to the States about collecting performance data. OSEP also identified this as a concern and is addressing this through our investments in several OSEP-funded centers that provide States with important technical assistance to improve their data collection. Specifically, the National Center on Special Education Accountability Monitoring is developing a parent involvement survey for use by States. This survey is moving into the pilot-test phase and should be available for State use next summer. Other centers are working with OSEP to prepare model data collection and analysis strategies for reporting in areas such as early childhood and secondary transition, preschool and post-secondary outcomes, and dispute resolution.

The Department is in favor of using the compliance agreement process, as appropriate to an individual State's situation, and as a way for a State to continue to receive federal funds while working to correct noncompliance within a reasonable period of time not to exceed 3 years from the date of the agreement. Because the compliance agreement process is voluntary on the part of the State, the Department cannot independently use our "authority to initiate compliance agreement proceedings" as you recommend, however. We have attempted, in the past, to make States aware of the benefits of entering into a compliance agreement and will continue this practice.

We appreciate the acknowledgement in the draft report that the Department continues in its efforts to improve accountability measures in a way that drives and supports increased compliance and improved results for children with disabilities. We note that the Draft Report confirms our analysis of the deficiencies in the CIMP and we believe the Department's new CIFMS is effectively addressing these deficiencies in a way that promotes accountability for results in a timely manner.

**Appendix III: Comments from the Department
of Education**

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As is customary, we are providing suggested technical and production edits separately. We are available to discuss any of our suggested changes with your staff if this would be helpful to you.

Sincerely,



Troy R. Justesen, Ed.D.
Delegated the authority
To perform the functions of
Assistant Secretary for Special Education and
Rehabilitative Services

Enclosure

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

The following people also made important contributions to this report:
Ellen Soltow, Summer Pachman, Behn Kelly, Susan Bernstein, and
Walter Vance.

Related GAO Products

Special Education: Additional Assistance and Better Coordination Needed among Education Offices to Help States Meet the NCLBA Teacher Requirements. [GAO-04-659](#). Washington, D.C.: July 15, 2004.

Special Education: Clearer Guidance Would Enhance Implementation of Federal Disciplinary Provisions. [GAO-03-550](#). Washington, D.C.: May 20, 2003.

Special Education: Numbers of Formal Disputes Are Generally Low and States Using Mediation and Other Strategies to Resolve Conflicts. [GAO-03-897](#). Washington, D.C.: September 9, 2003.

School Dropouts: Education Could Play a Stronger Role in Identifying and Disseminating Promising Prevention Strategies. [GAO-02-240](#). Washington, D.C.: February 1, 2002.

Student Discipline: Individuals With Disabilities Education Act. [GAO-01-210](#). Washington, D.C.: January 25, 2001.

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