Hot Topics in Special Education Compliance

Dawn White
Education Service Center, Region 20

Sources of Noncompliance

• State Performance Plan data
• PBMAS compliance reviews
• TEA onsite visits
• TEA desk reviews
• Special education complaints process
ARD COMMITTEE MEMBERSHIP

ARD Committee Membership

• Common noncompliance citations in this area are:
  – General education teacher is not a teacher of the child;
  – Special education representative does not provide special education services to the child. (This citation often occurs when this is a “monitoring teacher” or “case manager” who does not actually implement a portion of the child’s IEP); and/or
  – CTE representative was not present at the meeting when initial or continued participation in a CTE course was being considered.
Dual Certification – Dual Role

- Student Attendance Accounting Handbook:
- The specially designed instruction documented in the IEP is provided by special education personnel. One teacher, even if dually certified, may not serve in both a general education and a special education role simultaneously when serving students in grades K–12.

ACCELERATED INSTRUCTION/INTENSIVE PROGRAM OF INSTRUCTION
AIP/IPI

• When a student fails a state assessment, accelerated instruction/intensive program of instruction must be provided.

• Note: This is a general education requirement – not specific to students who receive special education services.

AIP/IPI

• Common noncompliance citations in this area are:
  – Accelerated instruction/intensive program of instruction is not specified in the IEP
  – Accelerated instruction/intensive program of instruction is not based on student’s state assessment results/individualized to student’s needs
PERSONAL GRADUATION PLANS

Personal Graduation Plans (PGPs)

• All students who are fail a state assessment or are at risk of not graduating on time must have a personal graduation plan. (HB 5 requires all high school students have a PGP.)

• Note: This is a general education requirement – not specific to students who receive special education services.
PGPs

• Common noncompliance citation in this area:
  – PGP is not developed by the ARD committee/specified in the IEP

TRANSFER STUDENTS/COMPARABLE SERVICES
Transfer Students/Comparable Services

• When a student transfers school districts/charters schools, the receiving school must verify the receipt of special education services and then, in consultation with the parent(s), develop comparable services.

• Within 30 school days of verification that the child received special education services, the receiving school must either adopt the previous IEP or develop a new IEP.

Transfer Students/Comparable Services

• Common noncompliance findings in this area:
  – Services are changed with no justification
  – New IEP is not developed within timeline
  – IEP adopted from previous LEA had errors/missing pieces
“What is required is that the IEP include information about the amount of services that will be provided to the child, so that the level of the agency’s commitment of resources will be clear to parents and other IEP Team members. The amount of time to be committed to each of the various services provided must be appropriate to the specific service, and clearly stated in the IEP in a manner that can be understood by all involved in the development and implementation of the IEP.”

Federal Register, Vol. 71, No. 156, page 46667
Frequency

- **how often** the child will receive the service(s).
- If the service is less than daily then the conditions for the provision of the services must be clearly specified within the ARD documents using a weekly reference (ex: 1 hour per week, 30 minutes every two weeks)
- From TEA’s document “Documenting the Frequency, Location and Duration of Related Services”

Duration

- Duration - **how long** each “session” will last (number of minutes) and **when** services will begin and end (starting and ending dates)
- From TEA’s document “Documenting the Frequency, Location and Duration of Related Services”
Location

• Location - *where* services will be provided (in the general education classroom or another setting such as a special education resource room)

• From TEA’s document “Documenting the Frequency, Location and Duration of Related Services”

Frequency, Duration, and Location

• CANNOT be based on administrative convenience
Frequency, Duration, & Location

• Common noncompliance findings in this area:
  – No frequency, duration, and/or location specified
  – Frequency, duration, & location not specified in accordance with TEA guidelines
  – Services were not delivered in accordance with IEP prescribed frequency, duration, location

Can you schedule it on a calendar?
And would a colleague follow the same schedule you did?

Does it matter if the services are direct or indirect?

- No.
- The requirements are the same for direct and indirect services.
What if the student is fully included/mainstreamed (40)?

- The same rules apply. All special education services, regardless of location and/or delivery provider, must have a frequency, duration, and location.
- This includes “inclusion” type/in-class support services.

2014-2015 Student Attendance Accounting Handbook

- For a student to be coded with an instructional setting code of 40 (special education mainstream), the student must have:
  - special education and related services provided in a general education classroom on a regularly scheduled basis;
  - an IEP specifying the special education and related services that enable the student to access the general curriculum and to make progress toward individual goals and objectives; and
  - qualified special education personnel involved in the implementation of the student’s IEP through the provision of direct, indirect, and/or support services:
    - to the student in the general education classroom and/or
    - in collaboration with the student’s general education classroom teacher(s).
- Monitoring student progress in and of itself does not constitute a special education service. If certified special education personnel are only monitoring student progress, mainstream special education funding must not be generated.
For an “inclusion student” can I take him/her to another location to provide the service (accommodation/modification/etc.)?

- The ARD committee determines the location in which the service should be provided (general education or special education setting). A service provider cannot override the decision of the ARD committee.

If the service provider is absent/unavailable, does the service need to be made up? What if it is a co-teach or inclusion setting where a general education teacher is present?

- Yes. The school must provide the service from a special educator on the schedule developed by the ARD committee.

- Per the “Student Attendance Accounting Handbook” a general educator, even if dually certified, cannot simultaneously provide general education and special education services.
If the student is absent, does the service need to be made up?

• It depends…

• Schools should consult with a parent when the student is repeatedly absent from school. ARD committees should discuss service delivery options when a student repeatedly misses a service. If student performance is negatively impacted, the ARD committee should address the schedule of services and consider the appropriateness of compensatory services.

Let’s Practice
45 minutes once per week

45 minutes once per week
15 minutes one time per day
as needed

as needed
360 minutes per school year

360 minutes per school year
at least 30 minutes per week

at least 30 minutes per week
20 minutes twice per week
360 minutes/12 times per year

360 minutes/12 times per year
upon student request
1 session of 45 minutes per week for the first 5 weeks of 6 weeks period; no session week 6 to allow for generalization of skills
IEP IMPLEMENTATION

IEP Implementation

• IEP not implemented as written
  – Note: IEP is prescriptive, not suggestive.
• No documentation that IEP was implemented
Paraprofessionals

• Must be supervised by a special education teacher
  – This includes regularly scheduled meetings with the teacher to give direction to the paraprofessional.
  – These meetings must be documented.
STATE PERFORMANCE PLAN (SPP) INDICATORS

SPP Indicators

• Indicators 1-14, but most are collected through PEIMS
• LEAs must report data through TEASE for:
  – Indicator 7 (Early Childhood Outcomes)
  – Indicator 11 (Child Find)
  – Indicator 12 (Early Childhood Transition)
  – Indicator 13 (Postsecondary Transition)
  – Indicator 14 (Postschool Outcomes)
SPP Indicators

• Common noncompliance findings in this area:
  – LEA reported noncompliance with SPP Indicators 11, 12, or 13
  – Data not reported for SPP (All LEAs must certify and submit in TEASE, even if they have no students/data to report)

FINDINGS RELATED TO INCLUSION/MAINTSTREAM SERVICES
Inclusion/Mainstream

• Frequency, duration, & location
• Dually certified
• Paraprofessionals providing special education services

CLOSING THOUGHTS