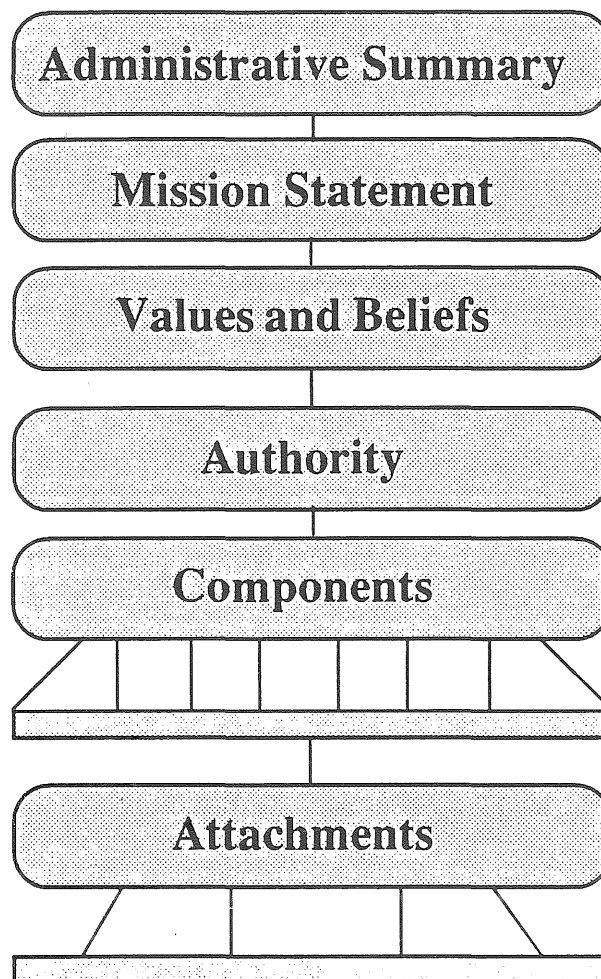


MINNESOTA

MONITORING MODEL



OFFICE OF MONITORING AND COMPLIANCE

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ADMINISTRATIVE SUMMARY

In May of 1988, the Office of Monitoring and Compliance convened a Monitoring Advisory Committee to discuss special education monitoring. This group included special education directors from metro and greater Minnesota, Education Cooperative Service Unit representatives, a director of an intermediate district, a regular education administrator, a parent representative, Office of Monitoring and Compliance staff, and Unique Learner Needs Section staff. The group worked throughout the year defining the mission of monitoring in Minnesota, the values and beliefs considered pivotal to monitoring's role, the authority upon which monitoring rests, the specifics of the monitoring cycle, and other recommended components of the monitoring process.

The outcome of the group's efforts is the attached Monitoring Model and Position Paper. It delineates the components mentioned above as well as further defining all aspects of the monitoring process.

Monitoring is defined as the gathering and review of information with the principal objective of determining special education program compliance. The mission of monitoring is to help assure a free appropriate public education for all students with handicaps. This is accomplished through monitoring programs for both compliance and quality, with an emphasis on program improvement. (See "Mission" and "Values and Beliefs", page 7).

Monitoring is conducted on a six year cycle, composed of a three year compliance monitoring cycle followed by a three year follow-up monitoring cycle. A firm commitment has been made to district self-study during the cycles. Self-study will be the basis upon which the district will assist the Office of Monitoring and Compliance to identify areas of desired and/or necessary program improvement. Also covered in the paper is a discussion of incentives, and state response to noncompliance, including sanctions for noncompliance.

A commitment has been made to the use of peer monitors during both the self-study and the State Education Agency on-site monitoring.

Contributions to program excellence and the development and support of quality services for youth are expected outcomes. These contributions and changes will lead to more consistency, greater satisfaction and increased benefits to all stakeholders.

The model has several benefits:

- respect for the district's professional desires to evaluate and improve its own system through self-study;
- development of a positive partnership between state and local school district personnel through State Education Agency monitoring, and discretionary peer monitors included in the monitoring cycle;
- the cooperative development of a state special education improvement plan to be implemented over a finite period of time;
- the cooperative development of local district improvement plans to be developed and maintained through cycles of monitoring;
- the cooperative development of an ongoing, supported approach to compliance rather than a periodic, intensive approach;
- the utilization of the State Education Agency monitoring process as part of a program improvement system;
- a second cycle much easier than the first...

There are also some concerns which need to be discussed:

- the perception of increased expenditures of time and effort to develop the communication links between the district and the state, and between sections of the State Education Agency;

- the role of, and process of attaining, state technical assistance (the Office of Monitoring and Compliance provides only limited technical assistance);
- the need for a strong commitment from both the state and the districts to continually improve programs;
- a recognition of the necessity for basic compliance (as mandated by legislation) in all areas regardless of priorities and program improvement;
- the necessity for the State Education Agency to respond to noncompliance and impose sanctions.

The general timelines for implementing the Monitoring Model are as follows:

Fall 1989	Regional meetings on the Monitoring Model and Position Paper
December 1989	Peer Review Training
Spring 1990	Pilot Peers as part of State Education Agency monitoring
Fall 1990	Peer Review Training

Ongoing activities will include quarterly meetings of the Monitoring Advisory Committee, work groups as necessary and the development of evaluation procedures for the model.

MISSION STATEMENT

The mission of special education monitoring in Minnesota is to help assure a free appropriate public education to all students with handicaps.

This will be accomplished through monitoring programs for both compliance and quality, with an emphasis on program improvement.

VALUES AND BELIEFS

We believe in quality education for all students.

We believe in the importance of school district as well as state ownership of the monitoring process. We believe the monitoring process should include participation of professional peers, parents, and other stakeholders. It should integrate, as appropriate, review of regular education, Vocational Education, Chapter 1, Limited English Proficiency, Migrant Education and others.

We believe monitoring should include ongoing self-study, resulting in validation of locally determined strengths and identification of areas of desired and/or necessary program improvement.

We believe school districts desire quality programs. We are committed to program improvement and believe technical assistance options should be created through monitoring. We believe monitoring should impact learner outcomes.

We believe in a quality monitoring process. This process would result in comprehensive training, consistent application of procedures, timely reporting, and appropriate dissemination.

We believe the Minnesota Department of Education is most effective when there is a coordinated response to change. This response needs to be clearly communicated internally to be consistent within the Department and clearly communicated externally to all stakeholders.

AUTHORITY

The Minnesota Department of Education has the authority, and is directly required by both state and federal law, to monitor the use of special education funds. The following laws apply:

- * MINN RULE 3525.1200 subp. 4 (Rules of the State Board of Education):

District compliance. Districts shall assure that they are in compliance with state and federal statutes and rules relating to the education of pupils. (January, 1988)

- * Minnesota State Plan: Part II, XIV B, A14B.1:

The State Education Agency shall adopt and use proper methods of administering each program, including:

.2: Monitoring of agencies, institutions, and organizations to avoid illegal, imprudent, wasteful, or extravagant use of funds.

.3: The correction of deficiencies in program operations that are identified through monitoring or evaluations. (1988-90)
(emphasis added)

- * 34 CFR 76.700 (Education Department General Administrative Regulations):

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications. (July 1, 1982) (emphasis added)

- * 34 CFR 300.148 (Education of All Handicapped Children Act, EHA):

Each annual program plan must be designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act. (April 1981) (emphasis added)

- * 34 CFR 300.575 (Education of the Handicapped Act, EHA):

The State educational agency shall describe in its annual program plan the policies and procedures, including sanctions, which the State uses to insure that its policies and procedures are followed and that the requirement of the Act and the regulations in this part are met. (April 1981) (emphasis added)

- * 20 U.S.C. 1232d(b)(1)-(8):

An application submitted under subsection (a) of this section shall set forth assurances, satisfactory to the Secretary --

- (1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;
- (2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to those entities, and that the public agency or nonprofit private agency, institution, or organization will administer the funds and property;
- (3) that the State will adopt and use proper methods of administering each program, including --

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law;

(B) providing technical assistance, where necessary, to those agencies, institutions, and organizations;

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations;

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the state will evaluate the effectiveness of covered programs in meeting their statutory objectives at such intervals (not less often than once every three years) and in accordance with such procedures as the Secretary may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program.

(Nov. 1, 1987)

COMPONENTS

It is the purpose of the Office of Monitoring and Compliance to review the current monitoring system and revise it, to more fully meet the needs of the federal Office of Special Education Programs, the Minnesota Department of Education, and local districts.

This paper speaks to the specifics of a monitoring process which allows both the Local Education Agency and the State Education Agency to consistently evaluate and improve the provision of services to students with handicaps. It sets forth the general provisions of Minnesota's commitment to programmatic excellence through a monitoring process which emphasizes a partnership between the Local Education Agency and the State Education Agency. This partnership will rely heavily on a selection of both internal self-study and external monitoring, with the full process and cycle providing an evaluation and feedback loop. To further understand the proposed monitoring process it is helpful to look closely at eight components: the cycle, self-study, general monitoring procedures, corrective action planning, peer review, state response to noncompliance, incentives and evaluation.

CYCLE

KEY TERMS

Self-Study;

Pre-onsite Monitoring Activities;

Monitoring;

Corrective Action Plan (CAP);

Follow-up Monitoring.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

The monitoring cycle is a six year cycle beginning with self-study, followed by a State Education Agency compliance review, the submission of a Corrective Action Plan, another year of self-study, a State Education Agency follow-up review, and submission of a second Corrective Action Plan, if necessary (see diagram, page 15). This cycle will allow district as well as State Education Agency evaluation, and will incorporate monitoring as an on-going district special education service.

Yearly Activities

Year One

This year will be a year for district self-study. The district will identify areas of desired and/or necessary program improvement. Based on the results of the self-study, and the sharing of that information with the Office of Monitoring and Compliance, activities for the second year can be planned to more completely meet the monitoring needs of the district. (See "Self-Study (Year One and Year Four)," page 17).

Year Two

The second year is formal compliance monitoring by the Office of Monitoring and Compliance. (See "General Monitoring Procedures (Year Two and Year Five)," page 19).

Year Three

Following compliance monitoring, the district will be asked to submit a Corrective Action Plan delineating the district's plan to correct any areas of noncompliance. During the third year of the monitoring cycle the district is to implement the approved plan. (See "Corrective Action Planning (Year Three and Year Six)," page 23).

Year Four

Another year of self-study follows the implementation of the Corrective Action Plan. This allows the district to identify how well it has implemented its plan, and the effectiveness of the first three year cycle. (See "Self-Study (Year One and Year Four)," page 17).

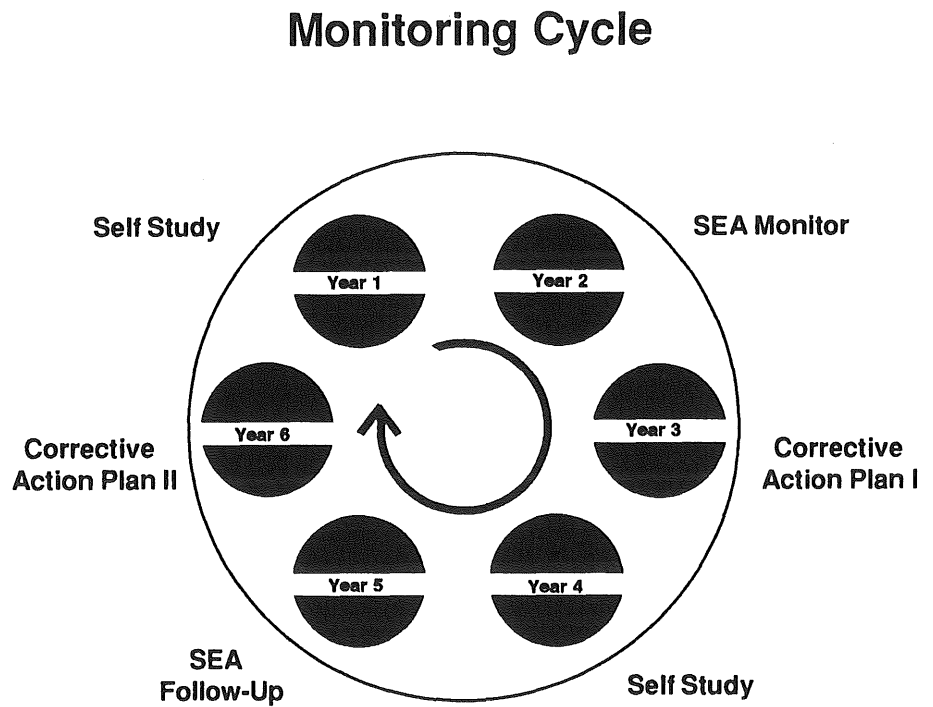
Year Five

The fifth year is for formal State Education Agency follow-up monitoring. Follow-up monitoring will be designed on the basis of the previous compliance monitoring and Corrective Action Plan. (See "General Monitoring Procedures (Year Two and Year Five)," page 19).

Year Six

Should there be items identified in year five that need corrective action, the district will submit and implement a new Corrective Action Plan. (See "Corrective Action Planning (Year Three and Year Six)," page 23).

The following diagram illustrates the continuous nature of the proposed monitoring cycle:



SELF-STUDY

(Years One and Four)

KEY TERMS

Self-Study;
Monitoring;
Program Improvement;
Evaluation;
Peer Monitors.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

The purpose of self-study is to encourage districts to evaluate their own programs and system and to allow the State Education Agency to incorporate that evaluation into the on-site monitoring process. Additionally, it is the purpose of self-study to promote compliance and program improvement as an integral part of special education at the local level. Self-study is the district's method of evaluating itself. It is a district-designed and implemented compliance review. Through the process the district has an opportunity to identify and train personnel in compliance standards and techniques used to monitor those standards, thus providing the district with on-going evaluative information.

Sources for self-study range from the Minnesota Administrators of Special Education-developed Total Special Education System document entitled "Developing and Improving Your Total Special Education Program," and evaluation systems such as the North Central Evaluation, which covers all school programs, to district-developed self-study tools which incorporate all monitoring standards.

IMPLEMENTATION

As the model is implemented, self-study will become a significant step. It is the focus of both year one and year four of the cycle. It is the method by which the district evaluates the implementation of its Corrective Action Plan.

Additionally, self-study is one baseline from which both the district and the state can view results and work as partners for program improvement. As information is gathered, the state may wish to recognize areas for commendation, as well as identify areas for more intensive monitoring. If a specific program or administrative area is selected, team members and/or peer monitors knowledgeable in that area may be selected to participate on that monitoring team.

DISCUSSION

There are several methods of self-study and several processes already in use by districts. One option available is the Improvement Section (yellow) of the Minnesota Administrators of Special Education-developed Total Special Education System Manual. The Description Section (blue), when completed and submitted to the State, achieves the documentation necessary prior to State Education Agency on-site monitoring. The numbering of the Compliance Manual, which includes rules and laws, and both sections of the Total Special Education System Manual are being revised to coordinate the systems.

GENERAL MONITORING PROCEDURES

(Years Two and Five)

KEY TERMS

Pre-onsite Monitoring Activities;

Monitoring;

Follow-up Monitoring;

Peer Monitors;

Evaluation.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

The Office of Monitoring and Compliance follows several general procedures when conducting State Education Agency monitoring. When entering this part of the cycle, districts are first given notice of the schedule. There is communication between State Education Agency staff and special education directors regarding orientation meetings, data which needs to be collected prior to the monitoring, team arrival, and other pre-onsite monitoring activities. This is true for both compliance reviews and follow-up reviews.

Monitoring will include on-site interviews with district staff, record reviews, and a fiscal review. A percentage, representing a sample of all student records from the latest child count, will be reviewed. Efforts will be made to have equitable representation of districts within cooperatives, and equitable representation of schools within districts.

For compliance reviews, a team, consisting of a chair and team members from the Office of Monitoring and Compliance and the Unique Learner Needs Section, and an option of peer monitors, visits a cooperative or district for several days. For follow-up reviews, there are options of desk reviews, meetings, and/or on-site visits with a team of monitors.

Following a review, the team chair completes a preliminary report. After the district has responded to this report, a final report is issued. The report will include areas needing improvement (noncompliance) and areas of strength (commendation). Following the final report, the district will prepare a Corrective Action Plan explaining how it will address the areas of noncompliance.

IMPLEMENTATION

The State Education Agency will initiate these monitoring procedures during year two and year five of the six year monitoring cycle. Between compliance and follow-up reviews, it is recommended districts conduct self-studies to continue the process of evaluation and improvement.

DISCUSSION

In year two of the cycle, the Office of Monitoring and Compliance will conduct formal compliance monitoring. This will be intensive monitoring of all programs (formerly referred to as "horizontal monitoring"). The process and timelines for compliance monitoring are as follows:

<u>Task</u>	<u>Approximate Timelines</u>
1. The Manager of the Office of Monitoring and Compliance sends a letter of notification of monitoring to the school superintendent with a copy to the director of special education.	Eight Weeks Prior to Site Visit
2. The school district(s) submit(s) requested documentation for review by the monitoring chairperson prior to the site visit.	Six Weeks Prior to Site Visit

3. The chairperson and special education director develop an on-site schedule.	Prior to Site Visit
4. The chairperson conducts an orientation on-site to assist the district in explaining the process to staff members. This meeting is optional.	Prior to Site Visit
5. The chairperson and team members carry out the on-site visit.	As Scheduled
6. The chairperson reviews the data gathered by the team members, prepares a preliminary report and mails it to the superintendent and special education director.	Four to Eight Weeks After Site Visit
7. The school district personnel review the preliminary report for accuracy, and contact the chairperson to clarify findings or to submit additional evidence of compliance.	Within Two Weeks of Receipt of Report
8. The Manager of the Office of Monitoring and Compliance mails the final report to the school board chairperson, school superintendent and director of special education.	Eight to Twelve Weeks After Site Visit
9. The Manager of the Office of Monitoring and Compliance informs the Unique Learner Needs Section of noncompliance issues requiring budget adjustments.	Upon Issuance of the Final Report

10. The school district prepares a Corrective Action Plan (CAP) to remediate each problem area and unmet criterion. The CAP is submitted to the chairperson for approval.	Within Forty-Five Calendar Days of Receipt of Final Report
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During the on-site visit the monitoring team closely assesses the district's compliance with state and federal law and rule. The structure for this assessment is found in the "Compliance Manual," a publication of the Office of Monitoring and Compliance. The manual is numbered consistent with the Minnesota Administrators of Special Education-developed Total Special Education System, facilitating the district's self-study and preparation for on-site compliance monitoring.

The outcome of this year of monitoring will be a final report specifying citations of noncompliance which must be addressed and corrected through the development and implementation of the Corrective Action Plan. As necessary, budget adjustments will be made. The final report will also commend the district for ways in which it has implemented programs beyond the basic requirements of the law and consistent with best practice. Specific results of the final report may be challenged through the Office of the Assistant Commissioner, Division of School Management and Support Services.

The fifth year of the cycle the district will again be monitored by the State Education Agency. The purpose of this monitoring activity is to confirm that the district has corrected all areas of noncompliance identified in year two.

CORRECTIVE ACTION PLANNING

(Years Three and Six)

KEY TERMS

Evaluation;

Commendation;

Promising Practices;

Peer Review;

Peer Monitors;

Incentive;

Corrective Action Plan;

Self-Study;

Monitoring.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

During the third and sixth year of the cycle, following self-study and formal State Education Agency monitoring, the district must respond to the concerns of the compliance monitoring final report by implementing its Corrective Action Plan. This plan must address the specific issues raised during monitoring, state how, when, and by whom they will be corrected. The Corrective Action Plan must be approved by the Office of Monitoring and Compliance.

IMPLEMENTATION

Implementation of the Corrective Action Plan is the culminating activity of monitoring. It is the goal toward which both self-study and formal State Education Agency monitoring lead. With comprehensive and insightful implementation of its state-approved Corrective Action Plan, a district moves closer to full compliance with state and federal law and rule, and frees itself to devote more time and energy to quality programming, innovative techniques, and positive, pro-active system development. As the Corrective Action Plan is implemented, and policies and procedures are developed consistent with mandates, less time may be spent on the specifics of procedural issues, and the district may become less liable procedurally in due process hearings and complaint investigations.

As the peer review program develops, a new source for technical assistance will become available. Innovative ideas developed and piloted in one district can be shared with other districts. Peers can assist in program development and implementation. Solutions to specific problems and needs can be sought in a more open and interactive arena.

DISCUSSION

Implementation of the Corrective Action Plan is crucial to the success of the monitoring process. It is the way the district avoids further citations, and a more serious response to those citations. When areas of noncompliance are initially identified through State Education Agency monitoring, the district will be cited on those areas. As appropriate, the district's budget may be adjusted. If the areas of noncompliance are not corrected in a timely manner through the implementation of a Corrective Action Plan, the district risks the imposition of sanctions.

PEER REVIEW

KEY TERMS

Peer Monitors;

Program improvement;

Peer Review;

Incentive;

Promising Practices;

Self-Study.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

The use of professionals and other stakeholders to assist in monitoring and program evaluation is an option the State Education Agency and the Local Education Agencies may find beneficial in self-study, State Education Agency monitoring, and Corrective Action Planning. During their year of self-study Districts may, through the use of peers, identify and strengthen specific areas. During the year of formal monitoring, the Office of Monitoring and Compliance may enlist peers to look more closely at an identified area. As the Corrective Action Plan is implemented, districts may use peers to assist and advise.

All members of monitoring teams, (years two and five), including peer monitors, will be appointed by the Office of Monitoring and Compliance.

The timeline for implementing the use of peers in monitoring is as follows:

December 1989	Peer Review Training
Spring 1990	Pilot Peers as part of State Education Agency Monitoring
Fall 1990	Peer Review Training

IMPLEMENTATION

Peer involvement may be district-initiated at any point in the monitoring cycle. At the district's discretion, peers may serve as members of the local self-study team, assisting the district in identifying areas of desired and/or necessary program improvement. Peers may also be able to assist the district in implementation of the Corrective Action Plan.

The state will be responsible for the selection and training of peer monitors. Peer monitors may assist with the evaluation of compliance, focusing on programmatic and systemic improvement including policy, budget, organization, structure and resources, and/or the assessment of specific instructional practices and specific program planning. The Office of Monitoring and Compliance will coordinate peer monitor assignments, determine the specialized focus of peer review, and assign specific tasks for specific peer monitors.

DISCUSSION

Three areas of discussion follow. They include training, logistics, and the advantages of a peer review system.

Training

Training activities will be required prior to peer participation as a member of a State Education Agency monitoring team. Areas of training will include monitoring procedures, state expectations for team involvement, data privacy, orientation and exit meetings, use of self-study information, and analyzing information for reporting to the team chairperson. The training will be in three phases. Phase One will be offered through training opportunities available in the fall, beginning in 1989. Phase Two of the training will include an optional "shadowing" of team members on a monitoring visit. Periodic meetings to review new rules and procedures will be held as needed. Phase Three of the training will include participation as a team member on a monitoring visit.

It is important peers be willing to learn, be flexible, and be sensitive to the approaches used in other districts. Peers must receive appropriate approval to participate in the training, and be willing to respond to the direction exercised by the Office of Monitoring and Compliance for selection, scheduling and other responsibilities.

Logistics

The state will pay travel and expenses for peer monitors while they are training and engaging in State Education Agency monitoring activities. A peer monitor must receive the endorsement of his/her district (or, in the case of a parent, the endorsement of a district or of a parent advocacy or support organization recognized statewide) and commit to two days of training, a day of shadowing and a minimum of one week of monitoring during a given year.

Advantages

The use of peers to assist with program review has several distinct advantages:

1. the monitoring team will be able to offer programmatic specialization to a greater extent than is currently possible;
2. the monitoring team will be able to tie the self-study phase to the on-site monitoring phase in a practical and experience-based manner, facilitating a more in-depth look at strengths and areas needing improvement;
3. the monitoring team will be able to more fully and specifically validate the self-study and other sources of system and program evaluation;
4. the monitoring team will be able to facilitate a more thorough and detailed look at the system, thereby allowing conclusions based on a broader data-base;
5. the monitoring process will be an excellent source of staff development, assisting peers in broadening their perspectives on special education programs around the state and on the intricacies of compliance with state and federal mandates;
6. the use of current in-service professionals to assist with a federally mandated state responsibility will improve communication between the Minnesota Department of Education and those in the field;

7. including peers at several points in the monitoring cycle will promote an integrated and comprehensive monitoring process leading more quickly to compliance, and the possibility of less frequent on-site monitoring;
8. sharing information through peers has the potential for the compilation of program data leading to the development of a catalogue of Promising Practices;
9. identifying peer monitors will allow districts to use their Comprehensive System of Personnel Development money to hire in-service professionals to assist in diagnosing and alleviating district problems, corrective action planning, self-study, and implementing creative program options.

STATE RESPONSE TO NONCOMPLIANCE

KEY TERMS

Monitoring;
Pre-onsite Monitoring Activities;
Corrective Action Plan (CAP);
Follow-up Monitoring;
Problem Area;
Unmet Criteria;
Citation;
Noncompliance;
Redirection of Funds;
Sanctions.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

It is a federally mandated responsibility of the State Education Agency to monitor Local Education Agency programs receiving special education funds. It is a federally mandated responsibility of the State Education Agency to assure all federal funds are spent in the manner dictated by the federal government. (See "Attachment C: Authority and Scope of Sanctions" page 51).

In response to the on-site monitoring conducted by the federal Office of Special Education Programs in 1985, Minnesota has been required to identify and clearly delineate a policy for imposing sanctions on districts not complying with the law.

IMPLEMENTATION

As this issue was addressed, it became clear further clarification was needed in the area of budget adjustments, initiated by the Office of Monitoring and Compliance, in response to the identification of areas of noncompliance. This section speaks to both budget adjustments and sanctions.

When, in response to a monitoring visit or complaint investigation, it is determined federal or state funds have been spent in a manner inconsistent with state and/or federal law or rule, the Minnesota Department of Education will make adjustments in the district's budget. When documentation in student records does not substantiate eligibility of students claimed on the most recent December child count, budgets will be adjusted to reflect the corrected child count and personnel time. When accounting records do not accurately reflect all allowable expenditures, or when there has been an accounting error, budgets will be adjusted.

Sanctions will only be imposed if noncompliance exists and attempts at negotiation and reconciliation have not been successful. This might occur in the following instances:

1. Following an on-site monitoring final report:
 - * an approved Corrective Action Plan has not been submitted under specified timelines; or
 - * an approved Corrective Action Plan has not been implemented under specified timelines.
2. Following a complaint investigation and final report:
 - * an approved Corrective Action Plan has not been submitted under specified timelines; or
 - * an approved Corrective Action Plan has not been implemented under specified timelines.
3. Following a final due process hearing or appeal decision, the decision has not been implemented.

The chart on the following page illustrates the relationship between citations, problem areas, unmet criteria, budget adjustments, and sanctions.

CITATION

(noncompliance with a Federal Law or Rule,
Minnesota Statute or State Board of Education Rule)

- * Problem Areas identified through monitoring
- * Unmet Criteria identified through monitoring
- * Complaint Resolution finding of noncompliance

(under conditions specified on pages 33-34)

Budget Adjustments
(as listed on page 32)

(under conditions specified on page 30)

Sanctions
(as listed on page 35)

As a final step of a compliance monitoring or a complaint investigation the district is notified if noncompliance exists. The district may only be required to make corrections. In some cases, however, budget adjustments may be required. If the areas of noncompliance are not brought into compliance, sanctions may be imposed.

DISCUSSION

In a discussion of noncompliance, three areas need to be addressed: budget adjustments, sanctions, and the process of imposing sanctions.

Budget Adjustments

Budgets may be adjusted in five ways:

1. the district's budget application is incomplete and/or inaccurate and payments are withheld until the budget is corrected;
2. federal funds will be adjusted for each student for whom documentation does not exist to substantiate eligibility;
3. state funds will be adjusted when there is determined to be a trend in the cooperative or district of lack of documentation to substantiate eligibility;
4. when allowable expenditures have not been documented or supported;
5. Comprehensive System of Personnel Development money is redirected to address issues of noncompliance, until noncompliance issues are resolved.

In reviewing district documentation of student eligibility, monitors will verify that student records contain sufficient data supporting the existence of a handicapping condition according to approved district criteria. This must include a minimum of:

1. appropriate assessment data;
2. a valid IEP verifying placement.

Sampling

The sample size must be sufficient to capture the characteristics of the population. For cooperatives, the sample size will be three percent of the population and in no case less than thirty records. Further, to assure that a district in a cooperative is adequately represented, no sample will be less than five records. The number of records that will be sampled from single districts will be computed.

A random sample will be developed from the current year December 1 child count verification list provided by the district/cooperative prior to the monitoring visit. A table of random numbers will be used to generate the random sample. Prior to the monitoring visit, the monitoring chair will notify the district/cooperative of the names of the students whose records will be made available for review.

Funding Sources

There are two sources for adjusting funds. One is federal money based on child count. The other is money provided under state law and rule. Funds may be adjusted from either or both of these sources.

Federal funds will be adjusted for each student identified as ineligible. Federal funds will not be adjusted for students who receive more than one service and who are eligible for at least one of these services. The amount of the adjustment shall be equal to the amount the student generated for the count period.

Students will be counted as ineligible for the purpose of the adjustment of state funds in the following situations:

1. student records lack sufficient data supporting eligibility for each service provided:
 - a. for students identified as handicapped;
 - b. for students receiving service who have not been identified as handicapped;
2. student records clearly indicate that the student did not qualify for service according to district criteria and there was not a valid, documented override.

State funds will be adjusted when more than twenty percent of student records reviewed in a cooperative or single district fail to contain adequate documentation of eligibility. Up to twenty percent represents the amount that is statistically considered a measure of error. More than twenty percent is thought to represent a trend in district/cooperative practice of serving ineligible students. No student record will be counted as ineligible more than once. If eighty percent or more of the

ineligible students are from one district in a cooperation, then only that district shall have funds adjusted.

When twenty percent or fewer of student records reviewed fail to contain adequate documentation of eligibility, only federal funds will be adjusted.

To determine the amount of state aid to be adjusted, the number of hours of ineligible service provided will be calculated. This number of hours will be multiplied by the average hourly cost per year of special education service for a Minnesota pupil receiving special education. The product is the amount that will be adjusted.

For the purpose of adjusting federal funds the monitoring chair will report the number of students for whom there were insufficient eligibility data. For the purpose of adjusting state funds, the chair will report the number of ineligible service hours provided for one year for students having insufficient eligibility data.

Upon receipt of the monitoring report, the Aids, Data and Technology Unit of the Unique Learner Needs Section will calculate the amount of funds to be adjusted and enter the appropriate amounts in the report based on ineligible students who:

1. were reported for child count but have not yet generated funds;
2. were reported for the previous year's child count and have generated funds;
3. are being served and therefore are generating state funds.

(For further explanation of budget adjustments as it relates to the issue of eligibility, please see Attachment D, page 61.)

Sanctions

There are four legally mandated responses to noncompliance. The text of the citations are found in "Attachment C: Authority and Scope of Sanctions" page 51.

The Commissioner may:

1. rescind special education program approval, pursuant to Minn. Stat. 124.32 Subd. 7;
2. reduce state aid, pursuant to Minn. Stat. 124.15; and
3. withhold all Education of All Handicapped Children Act (EHA) and/or state special education monies until noncompliance issues are satisfactorily resolved pursuant to 34 CFR 300.148 and 34 CFR 300.575;
4. authorize more frequent monitoring of the district until all noncompliance issues are resolved pursuant to 20 U.S.C. 1232d(b)(1)-(8).

Other additional practices, not currently used in Minnesota, are used by other states and could be studied and considered for use in Minnesota.

The Process Of Imposing Sanctions

In the absence of an urgent situation requiring direct and immediate intervention, sanctions will be imposed using the following two-step process:

- Step I: Noncompliance exists. No effort has been made towards compliance, and attempts at negotiation and reconciliation have not been successful.
- Step II: A Sanctions Letter is sent to the Chairperson of the local School Board, and copied to the Superintendent and Director of Special Education identifying sanctions, issues and timelines.

If state aid is to be withheld or reduced, the process for doing so, identified in M.S. 124.15, must be followed.

INCENTIVES

KEY TERMS

Program Improvement;

Commendation;

Incentive;

Peer Review;

Promising Practices;

Self-Study;

Peer Monitors.

The definitions are found in "Attachment A: Definitions," page 43.

INTRODUCTION

It is the mission of the Office of Monitoring and Compliance to "assure a free, appropriate public education to all students with handicaps...accomplished through the monitoring of Local Education Agency programs for both compliance and quality." It is the belief of the Office of Monitoring and Compliance that monitoring should have an emphasis on program improvement... (see "Mission" and "Values and Beliefs," page 7). We are, therefore, committed to the development, maintenance, and dissemination of promising practices and to the development, implementation and evaluation of the use of peers in the monitoring process, as well as identifying other specific incentives to provide recognition and external motivation for achieving excellence.

IMPLEMENTATION

Every effort will be made to fully integrate positive feedback and support for excellence into all areas of the monitoring cycle. Specifically, there are four ways in which the Office of Monitoring and Compliance can use the monitoring cycle to reinforce this commitment to excellence:

Peer Review

Part of the intent of using peers to assist in the monitoring process is to recognize competent and creative professionals and encourage them to evaluate and improve programs in their own and other districts. This is an incentive for teachers and administrators to excel, and an incentive for districts to identify and recognize employees who do excel.

Self-Study

Through the self-study process, a district will evaluate itself. It will identify areas needing improvement and correct them; it will identify excellence and acknowledge it. The district does not need to rely exclusively on the State Education Agency for assessing strengths and areas to improve, but becomes an active partner in the improvement of services and the acclamation of exemplary programs.

Promising Practices

Recognition of a program, or portion of a program, providing outstanding special education service to students, and identification of that program with the professionals responsible, is a way in which all may share the professional expertise of our state. With the assistance of the Unique Learner Needs Section and others, a compilation of those practices and a list of professionals who can serve as consultants and/or informal advisers to other programs, will provide a growing network for technical assistance. Additionally, there may be ways in which the Office of Monitoring and Compliance can assist in accessing funds for exceptional and/or experimental programs through the identification of grants, assistance in grant writing, etc.

Altering the Monitoring Cycle

If a district is able to effectively and completely implement its Corrective Action Plan, the Office of Monitoring and Compliance is prepared to accept that as evidence the district requires less intensive State Education Agency monitoring. This may alter the regular monitoring cycle.

DISCUSSION

The Office of Monitoring and Compliance would like to explore other ways to recognize outstanding contributions to programmatic and professional excellence. Comments and suggestions are welcome.

EVALUATION

INTRODUCTION

The Office of Monitoring and Compliance is committed to quality programming. This commitment extends to the quality of the monitoring process itself. To this end, an evaluation process will be initiated allowing appropriate feedback from communities and school districts.

Data will be gathered in areas which indicate the status of special education compliance in Minnesota. The evaluation design will include both formative data (information that provides for on-going change; that takes place concurrently with the action) and summative data (information that summarizes all areas of an organization and takes place after the fact) and emphasize both qualitative (describes in narrative form) and quantitative (makes use of numbers) analysis.

Sources of information include but are not limited to superintendents, directors of special education, other administrators, service providers, and parents.

Data to be collected will include a sampling of numbers and types of citations, complaints and complaint investigations, conciliation conferences, due process hearings, measures of satisfaction with the monitoring and complaint process, and most significantly, child change data.

IMPLEMENTATION

Survey forms will be distributed to district staff and parents, and selected telephone interviews will be conducted. Monitoring and complaint data will be gathered, conciliation conference and due process hearing data summarized, and child change data obtained. This data will be summarized, analyzed, profiled, and sent to internal State Education Agency units, and Local Education Agencies for their review. A status report will be written to summarize monitoring activities.

As appropriate, a Corrective Action Plan will be developed and implemented to coincide with additional evaluation information related to federal monitoring activities.

DISCUSSION

The mission of the Office of Monitoring and Compliance is to help improve educational services to children. The degree to which we are able to accomplish this mission is the focus of the evaluation process. It is expected that this combination of formative and summative evaluation processes will improve special education service delivery.

ATTACHMENTS

Attachment A: Definitions

Attachment B: Data Privacy

Attachment C: Authority and Scope
of Sanctions

Attachment D: Procedures for
Budget Adjustments,
Based on Eligibility
or Ineligibility, for
Monitoring Special
Education

ATTACHMENT A

DEFINITIONS

The following terms are defined as relevant to the monitoring process.

Corrective Action Plan

The plan submitted by the district following an on-site monitoring visit final report or complaint investigation. It must specify the areas of noncompliance, how, when, and by whom the areas will be brought into compliance, and how the district will communicate that compliance to the state and others. It must be approved by the Office of Monitoring and Compliance.

Citation

The notification of a Local Education Agency, by the Office of Monitoring and Compliance, that it is in noncompliance in specific areas.

Commendation

The notification of a Local Education Agency, by the Office of Monitoring and Compliance, that it has designed and implemented a program, or portion of a program, exemplifying sound educational principles and adherence to state and federal mandates.

Evaluation

The process of looking thoroughly at a program, allowing judgments to be drawn about its efficiency and its compliance with State and Federal rules and regulations.

Follow-up Monitoring

The monitoring process determining a district's implementation of its Corrective Action Plan. During follow-up monitoring, which will take place in year five of the cycle, other compliance issues may be identified in response to new factors such as new legislation, a complaint investigation, or a due process hearing.

Incentive

An encouragement for fulfilling, and/or expanding upon, a mandated responsibility.

Monitoring

The gathering and review of information which has as a principal objective the determination of whether each educational program for handicapped children (sic) administered within the State (including private schools in which handicapped children are placed by public agencies) meets educational standards of the SEA, EHA-B, and EDGAR (p. 1). (United States Education Department: 1985)

Noncompliance

Failure to adhere to a federal law, federal rule, Minnesota statute, or State Board of Education Rule.

Peer Monitors

Professionals and other stakeholders who are active in the peer review process and recognized for their training, monitoring activities and sharing of expertise. Peers, monitored by the Office of Monitoring and Compliance, may be supervisors, coordinators, lead teachers, special education teachers, regular education teachers, fiscal staff, parents, parent advocates, and others. Peer monitors will be selected at the discretion of the Office of Monitoring and Compliance.

Peer Review

Using educational professionals and other stakeholders to assist in one or more of the components of the monitoring system.

Pre-on-site Monitoring Activities

Activities required by the monitoring process in preparation for the on-site monitoring visit. These might include an orientation meeting, and the collection and submission of materials needed for review prior to the on-site activities, such as schedules, contracts, fiscal data, eligibility criteria, forms, etc.

Problem Area

An area where a district has been determined by the Office of Monitoring and Compliance to be in partial or general compliance with a particular criterion, but not fully in compliance. This means the district has violated state or federal law, but there is evidence the district has begun to address the issue. In terms of compliance, there is no significant distinction between "problem area" and "unmet criteria," as they both require corrective action.

Program Improvement

The process by which an educational program is assisted to more critically meet the needs of students, consistent with federal and state law.

Promising Practices

The identification of interesting and innovative special education programs and program components. These may be identified through monitoring activities and could be compiled allowing districts to identify and share their expertise with one another.

Redirection of Funds

An action of the State Education Agency to identify limited ways in which a Local Education Agency may use funds.

Sanctions

A severe and unusual action by the State Education Agency to interrupt the repeated misuse of state and/or federal special education funds by a Local Education Agency.

Self-Study

A process whereby a district evaluates its service delivery system allowing identification of areas of desired and/or necessary program improvement. The process may include the use of peer monitors or others in the community. When shared with the State Education Agency monitoring team, it enables the team to more accurately assess the district's program.

Unmet Criteria

An area where a district has been determined, by the Office of Monitoring and Compliance, to be out of compliance with a particular criterion. This means the district has violated state or federal law. In terms of compliance, there is no significant distinction between "problem area" and "unmet criteria," as they both require corrective action.

ATTACHMENT B

DATA PRIVACY

When acting as officials of Minnesota Department of Education, peers are allowed access to confidential files without direct parental permission.

* MINN STAT 13.05, subd. 4(b):

Private or confidential data may be used and disseminated to individuals or agencies specifically authorized access to that data by state, local, or federal law subsequent to enacted or promulgated after the collection of the data. (January 1989)

* 34 CFR 99.31(6)(i):

Under what conditions is prior consent not required to disclose information?...

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to...

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if...

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations. (April 11, 1988)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG 9 1988

E. Lowell Harris
Director
North Carolina Department of
Public Instruction
116 West Edenton St. Education Bldg.
Raleigh, North Carolina 27603-1712

Dear Mr. Harris: *Lowell*

This is in response to your recent letter seeking clarification of certain requirements of Part B of the Education of the Handicapped Act (EHA-B) concerning State educational agency (SEA) monitoring of special education programs at local school districts.

Your letter requests that we update the letter of January 12, 1979 from the Bureau of Education for the Handicapped (BEH), advising your Department that the use of local school district administrators and school principals, as well as members of your staff, to conduct monitoring of local special education programs outside of the district of employment did not violate the confidentiality requirements of Public Law 94-142. See 34 CFR §§300.560-300.576. The current position of the Office of Special Education Programs (OSEP) is consistent with the referenced letter. In providing you with a more current response, we will summarize the applicable Federal requirements in more detail, including those of the Family Educational Rights and Privacy Act of 1974 (FERPA) at 34 CFR Part 99 (copy enclosed).

Under both EHA-B and FERPA, personally identifiable information in education records -- such as, the student's name, address, or other information that would make the student's identity easily traceable (34 CFR 99.3) -- is protected from disclosure without prior consent. 34 CFR §300.571(a); 34 CFR §99.30. However, the FERPA regulations give States discretion to permit disclosure of personally identifiable information under the eleven exceptions to the prior consent requirement, which have been incorporated by reference into EHA-B. 34 CFR §300.571(a)(1); 34 CFR §99.31(b)(1)-(11).

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Page 2 - E. Lowell Harris


One such exception under FERPA is applicable to disclosures of personally identifiable information to "authorized representatives" of "State and local educational authorities" "subject to the requirements of §99.35." Under 34 CFR §99.35, those officials may be given access to education records in conducting audits, evaluations, or activities to ensure "compliance with Federal legal requirements" in connection with "Federal or State supported education programs."

34 CFR 99.35(a). The purpose of State educational agency (SEA) monitoring, required under EHA-B and the Education Department General Administrative Regulations (EDGAR), is to ensure compliance with applicable Federal legal requirements governing local special education programs funded under EHA-B; therefore, SEA monitoring is an activity to which this exception is applicable. However, the FERPA regulations do not address the question of whether out-of-district officials are persons who are authorized to have access to education records outside of the district of employment in conducting SEA monitoring of local special education programs. Because such persons are conducting monitoring of local special education programs at the request of the SEA and thus, are acting for the SEA, we believe they can be deemed "authorized representatives" of "State ... educational authorities." 34 CFR §99.31 (a)(3)(iii). Therefore, it is permissible for the SEA to give such persons access to education records outside of the district of employment.

Please bear in mind that the FERPA regulations impose certain conditions on the release of information from education records reviewed through SEA monitoring. Generally, personal identification of individuals -- i.e., names of students, teachers, and school administrators -- is protected from anyone except officials to whom disclosure of personally identifiable information is permissible. 34 CFR §99.35(b)(1). In addition, information collected through review of such records must be destroyed when no longer needed in connection with audits, evaluations, or SEA monitoring activities. 34 CFR §99.35(b)(2).

We hope this letter is helpful in clarifying OSEP's policy regarding the confidentiality of information collected through SEA monitoring activities. If we may provide further assistance, please let me know.

Sincerely,


G. Thomas Bellamy, Ph.D.
Director
Office of Special Education
Programs

Enclosure

ATTACHMENT C

AUTHORITY AND SCOPE OF SANCTIONS

The authority for the State's right to impose sanctions is clear. It is, in fact, mandated service the State must provide. The State may not fund programs that do not do what the Federal Government says they must do. It is illegal for the State to spend federal monies in ways prohibited by the Federal Government. If the State does so, the Federal Government is mandated to impose sanctions against the State.

- * MINN RULE 3525.1200 Subp. 4 (Rules of the State Board of Education):

District compliance. Districts shall assure that they are in compliance with state and federal statutes and rules relating to the education of pupils. (January 1988)

- * Minnesota State Plan: Part II, XIV B, A14B.1:

The SEA shall adopt and use proper methods of administering each program, including:

- .2: Monitoring of agencies, institutions, and organizations to avoid illegal, imprudent, wasteful, or extravagant use of funds.
- .3: The correction of deficiencies in program operations that are identified through monitoring or evaluations. (1988-90)

- * MINN STAT 124.32 Subd. 7:

Notwithstanding the provisions of section 124.15, the commissioner may modify or withdraw the program or aid approval and withhold aid pursuant to this section without proceeding according to section 124.15 at any time the Commissioner determines that the program does not comply with rules of the state board or that any facts concerning the program or its budget differ from the facts in the district's approved application. (January 1989)

* MINN STAT 124.15:

Subdivision 1. The amount of special state aids to which a district is entitled shall be the amount computed according to statutes. The annual state aid certificate made by the commissioner to the commissioner of finance shall show the amount of any reductions made.

Subd. 2. Whenever the board of the district authorizes or permits within the district violations of law by:

(1) employment in a public school of the district of a teacher who does not hold a valid teaching license or permit, or

(2) noncompliance with a mandatory rule of general application promulgated by the state board in accordance with statute in the absence of special circumstances making enforcement thereof inequitable, contrary to the best interest of, or imposing an extraordinary hardship on, the district affected, or

(3) continued performance by the district of a contract made for the rental of rooms or buildings for school purposes or for the rental of any facility owned or operated by or under the direction of any private organization, which contract has been disapproved where time for review of the determination of disapproval has expired and no proceeding for review is pending, or

(4) any practice which is a violation of sections 1 and 2 of article 13 of the Constitution of the state of Minnesota, or

(5) failure to provide reasonably for the school attendance to which a resident pupil is entitled under Minnesota Statutes, or

(6) noncompliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability, as defined in section 363.03.

The special state aid to which a district is otherwise entitled for any school year shall be reduced in the amount and upon the procedure provided in this section or, in the case of the violation stated in clause (1), upon the procedure provided in section 124.19, subdivision 3.

Subd. 2a. After consultation with the commissioner of human rights, the state board of education shall adopt rules in conformance with chapter 14 which direct school districts to file with the commissioner of education assurances of compliance and state and federal laws prohibiting discrimination and which specify the information required to be submitted in support of the assurances. The commissioner of education shall provide copies of the assurances and the supportive information to the commissioner of human rights. If, after reviewing the assurances and the supportive information it appears that one or more violations of the Minnesota human rights act are occurring in the district, the commissioner of human rights shall notify the commissioner of education of the violations, and the commissioner of education may then proceed pursuant to subdivision 3.

Subd. 3. When it appears that one or more of the violations enumerated is occurring in a district, the commissioner shall forthwith notify the board of that district in writing thereof. Such notice shall specify the violations, set a reasonable time within which the district shall correct the specified violations, describe the correction required, and advise that if the correction is not made within the time allowed, special state aids to the district will be reduced. The time allowed for correction may be extended by the commissioner if there is reasonable ground therefore.

Subd. 4. The board to which such notice is given may by a majority vote of the whole board decide to dispute that the specified violation exists or that the time allowed is reasonable or the correction specified is correct, or that the commissioner may reduce aids, in which case written notice of such decision shall be given the commissioner. If the commissioner, after such further investigation as the commissioner deems necessary, adheres to the previous notice, such board shall be entitled to a hearing by the state board, in which event a time and place shall be set therefor and notice be given by mail to the board of the district. The state board shall adopt rules governing the proceedings for hearings which shall be designed to give a full and fair hearing and permit interested parties an opportunity to produce evidence relating to the issues involved. Such rules may provide that any question of fact to be determined upon such review may be referred to one or more members of the board or to an employee of the state board acting as a referee to hear evidence and report to the state board the testimony taken. The state board, or any person designated to receive evidence upon a review under this act shall have the same right to issue subpoenas and administer oaths and parties to the review shall have the same right to subpoenas issued as are accorded with respect to proceedings before the industrial commission. There shall be a stenographic record made of all testimony given and other proceedings during such hearing, and as far as practicable rules governing reception of evidence in courts shall obtain. The decision of the state board shall be in writing and the controlling facts upon which the decision is made shall be stated in sufficient detail to apprise the parties and the reviewing court the basis and reason of the decision. The decision shall be confined to whether or not the specified violations or any of them existed at the date of the commissioner's first notice, whether such violations as did exist were corrected within the time permitted, and whether such violations require reduction of the state aids under this section.

Subd. 5. Violation; aid reduction. If the violation specified is corrected within the time permitted, or if the commissioner on being notified of the district board's decision to dispute decides the violation does not exist, or if the state board decides after hearing no violation specified in the commissioner's notice existed at the time of it, or that any that existed were corrected within the time permitted, there shall be no reduction of state aids payable to the school district. Otherwise state aids payable to the district for the year in which the violation occurred shall be reduced as follows: The total amount of state aids to which the district may be entitled shall be reduced in the proportion that the period during which a specified violation continued, computed from the last day of the time permitted for correction, bears to the total number of days school is held in the district during the year in which a violation exists, multiplied by 60 percent of the basic revenue, as defined in section 124A.22, subdivision 2, of the district for that year.

Subd. 6. Reductions in aid under this section and section 124.19 shall be from general education aid. If there is not sufficient general education aid remaining to be paid for the school year in which the violation occurred, the reduction shall be from the other aids listed in section 124.155, subdivision 2, that are payable to the district for that year in the order in which the aids are listed in section 124.155, subdivision 2. If there is not a sufficient amount of state aids remaining payable to the district for the school year in which the violation occurred to permit the full amount of reduction required, that part of the required reduction not taken from that school year's aids will be taken from the state aids payable to the district for the next school year, and the reduction will be made from the various aids payable for the next year in the order above specified.

Subd. 7. Appeal. A decision of the state board under this section may be appealed in accordance with chapter 14.

Subd. 8. Any notice to be given the board of a district will be deemed given when a copy thereof is mailed, registered, to the superintendent of the district, if there is a superintendent, and to the clerk of the board of the district, unless it is shown that neither the superintendent nor the clerk in fact received such notice in the ordinary course of mail, in which event time for correction will be accordingly extended by the commissioner so that a reasonable time will be allowed from actual receipt of notice for correction. If notice is sent by the commissioner with respect to a violation which is continued by the district in a succeeding year, no separate notice for that violation for the succeeding year will be required. Proceedings initiated by such notice shall include any continuing violation notwithstanding that a part thereof occurs in a year different from that in which it started. The commissioner may require reasonable proof of the time that a violation ceased for the determination of the amount of aids to be withheld. Costs and disbursements of the review by the district court, exclusive of those incurred in the administrative proceedings, may be taxed against the losing party and in the event taxed against the state shall be paid from the appropriations made to the department for the payment of special state aids. (January 1989)

* Minnesota State Plan: Part II A, XI:

When it has been determined that an LEA has included misclassified children/youth on its unduplicated child count, the SEA will go back to the year in which the infraction(s) occurred and reduce the LEA's entitlement for federal flow-through monies accordingly. The reduction is carried forward into the subsequent year's entitlement. (1988-90)

- * 34 CFR 76.700 (Education Department General Administration Regulations):

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications. (July 1, 1982)

- * 34 CFR 300.141 (Education of the Handicapped Act):

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be erroneously classified as eligible to be counted under section 611 (a) or (d) of the Act. (April 1981)

- * 34 CFR 300.148 (Education of the Handicapped Act):

Each annual program plan must set forth policies and procedures designed to insure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(2), and 612(3) of the Act. (April 1981)

- * 20 U.S.C. 1232d(b)(1)-(8)

An application submitted under subsection (a) of this section shall set forth assurances, satisfactory to the Secretary --

(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to those entities, and that the public agency or nonprofit private agency, institution, or organization will administer the funds and property;

(3) that the State will adopt and use proper methods of administering each program, including --

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law;

(B) providing technical assistance, where necessary, to those agencies, institutions, and organizations;

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations;

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the state will evaluate the effectiveness of covered programs in meeting their statutory objectives at such intervals (not less often than once every three years) and in accordance with such procedures as the Secretary may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program. (Nov. 1, 1978)

- * 29 September 1987 Memo from Norena Hale, Ph.D. to Superintendents and Directors of Special Education:

The purpose of this memo is to restate and clarify the Department's long-standing policy that categorical special education funds can only be used to support programs designed for handicapped children and youth. Special education administrators and teachers who also serve in any non-special education capacity must have their salary appropriately prorated for the purposes of reimbursement...

This memo also serves to clarify that when, through the course of MDE reviews of local programs, it has been determined that ineligible students have been identified and/or served in special education programs, the Department will recapture both the federal child count dollars and an appropriate proration of the service provider's salary.

- * 24 October 1988 Letter from G. Thomas Bellamy, Ph.D., Director, OSEP, to Norena Hale, Ph.D., re: response to Corrective Action Plan submitted by Minnesota to OSEP following monitoring of Minnesota:

DOE must submit to OSEP, within 30 calendar days of receipt of this letter, the procedures which will be used as administrative sanctions in cases of continued compliance violations. In addition, DOE must submit to OSEP within 60 calendar days of receipt of this letter, written assurance that each DOE staff person responsible for implementing the new procedures has received inservice training, and also the agenda of the training session with monitoring staff to verify that the training was conducted.

ATTACHMENT D

PROCEDURES FOR BUDGET ADJUSTMENTS, BASED ON ELIGIBILITY OR INELIGIBILITY, FOR MONITORING SPECIAL EDUCATION

January 1990

PROCEDURES FOR BUDGET ADJUSTMENTS BASED ON ELIGIBILITY OR INELIGIBILITY FOR MONITORING SPECIAL EDUCATION

The following procedures for budget adjustments are a part of the Minnesota Department of Education "Monitoring Model." The Minnesota Department of Education may make budget adjustments following a compliance or follow-up review of a district's special education program or a complaint investigation.

AUTHORITY

The authority for the adjustment of funds comes from federal and state law.

Federal Law:

34 C.F.R. § 300.140 provides that the State must develop a plan for recapturing funds used to serve any child who is determined to be erroneously classified as eligible.

State Law:

Minn. Stat. § 124.14, subd. 2 (1988) authorizes the Commissioner of Education to recapture misappropriated special education funds by any appropriate means.

The 1985 monitoring of Minnesota Department of Education by the U.S. Office of Special Education and Rehabilitation Services resulted in the mandate that Minnesota Department of Education include in a Corrective Action Plan procedures for recapturing funds for students determined to be erroneously classified as eligible. A memorandum from Dr. Norena Hale, Manager, Unique Learner Needs Section, Minnesota Department of Education (September 1987), reaffirmed the mandate through a policy clarification regarding budget adjustments.

MINIMUM REQUIREMENTS

The Minnesota Department of Education will adjust district budgets when documentation in student records does not substantiate eligibility of students claimed on the most recent December 1st child count. In reviewing district documentation of student eligibility, monitors will verify that student records contain sufficient data supporting the existence of a handicapping condition according to approved district criteria.

This must include a minimum of:

1. appropriate assessment data; (Appendix B);
2. a valid individual educational plan verifying placement.

For minimum standards intended to guide decisions about student eligibility for the purpose of budget adjustments, see Appendix B.

SAMPLING

The sample size must be sufficient to capture the characteristics of the population. For cooperatives, the sample size will be three percent of the population and in no case less than 30 records. Further, to assure that a district in a cooperative is adequately represented, no sample will be less than five records. The number of records that will be sampled from single districts is shown in Appendix A.

A random sample will be developed from the current year December 1st child count verification list provided by the district/cooperative prior to the monitoring visit. A table of random numbers will be used to generate the random sample. Prior to the monitoring visit, the monitoring chair will notify the district/cooperative of the names of the students whose records will be made available for review.

FUNDING SOURCES

There are two sources for adjusting funds. One is federal money based on child count. The other is money provided under state law and rule. Funds may be adjusted from either or both of these sources.

Federal Funds

Federal funds will be adjusted for each student identified as ineligible. Federal funds will not be adjusted for students who receive more than one service and who are eligible for at least one of those services. The amount of the adjustment will be equal to the amount the student generated for the count period.

Example 1:

In Cooperative A, 30 student records are reviewed. Of these, five fail to contain adequate documentation supporting eligibility. Federal funds are adjusted for each of the five students.

State Funds

Students will be counted as ineligible for the purpose of the adjustment of state funds in the following situations:

- 1) student records lack sufficient data supporting eligibility for each service provided:
 - a) for students identified as handicapped;
 - b) for students receiving service who have not been identified as handicapped;
- 2) student records clearly indicate that the student did not qualify for service according to district criteria and there was not a valid, documented override.

State funds will be adjusted when more than 20 percent of student records reviewed in a cooperative or single district fail to contain adequate documentation of eligibility. Up to 20 percent represents the amount that is statistically considered a measure of error. More than 20 percent is thought to represent a trend in district/cooperative practice of serving ineligible students. No student record will be counted as ineligible more than once. If 80 percent or more of the ineligible students are from one district then only that district in a cooperative will have funds adjusted.

Example 2:

In Cooperative A, 30 student records are reviewed. Of these, five did not contain adequate documentation supporting eligibility. Since state aid is not adjusted unless 21 percent or more of the records reviewed fail to support the determination of eligibility (21 percent of 30 records = seven records), no adjustments are made to the cooperative's state budget application. Only federal funds are adjusted.

When 20 percent or fewer of student records reviewed fail to contain adequate documentation of eligibility, only federal funds will be adjusted.

Example 3:

In District B, 50 student records are reviewed. Twenty-five records did not contain adequate documentation of eligibility. Since 21 percent of 50 = 11 records, state funds will not be paid for the 25 students whose records lacked adequate documentation. The number of service hours noted on the individual education plans for these students will be multiplied by the average hourly cost per year of special education in Minnesota. State categorical aids will be adjusted on the district's budget application for the year. Federal funds are also adjusted.

To determine the amount of state aid to be adjusted, the number of hours of ineligible service provided will be calculated. This number of hours will be multiplied by the average hourly cost per year of special education service for a Minnesota pupil. The product is the amount that will be adjusted.

REPORTING

For the purpose of adjusting federal funds, the monitoring chair will report the number of students for whom there were insufficient eligibility data. For the purpose of adjusting state funds, the chair will report the number of ineligible service hours provided for one year for students having insufficient eligibility data.

ADJUSTMENTS

Upon receipt of the monitoring report, the Aids, Data and Technology Unit of the Special Education Section will calculate the amount of funds to be adjusted and enter the appropriate amounts in the report based on ineligible students who:

- 1) were reported for child count but have not yet generated funds;
- 2) were reported for the previous years child count and have generated funds;
- 3) are being served and therefore are generating state funds.

APPENDICES

APPENDIX A

SINGLE DISTRICTS SAMPLE SIZE

The following table shall be used for selecting the sample size for single school districts:

# of Students with Handicaps	Sample Size	Percentage
1 - 10 students	all records	100%
11 - 30 students	10 records	33%
31 - 36 students	11 records	31%
37 - 44 students	12 records	27%
45 - 51 students	13 records	25%
52 - 59 students	14 records	24%
60 - 64 students	15 records	23%
65 - 70 students	16 records	23%
71 - 75 students	17 records	23%
76 - 80 students	18 records	23%
81 - 84 students	19 records	22%
85 - 90 students	20 records	22%
91 - 94 students	21 records	22%
95 - 100 students	22 records	22%
101 - 104 students	23 records	22%
105 - 110 students	24 records	22%
111 - 115 students	25 records	22%
116 - 123 students	26 records	21%
124 - 133 students	27 records	22%
134 - 145 students	28 records	19%
146 - 161 students	29 records	18%
162 - 182 students	30 records	16%
183 - 999 students	30 records	3%
1,000 and above	3% of records	3%

APPENDIX B

MINIMUM INDIVIDUAL ASSESSMENT DATA

The following minimum individual assessment data must be found in student records to document eligibility for special education services or funds may be adjusted. These are minimum standards intended to guide decisions about student eligibility for the purpose of budget adjustments.

Specific Learning Disabilities

- intellectual assessment
- achievement assessment
- norm referenced data documenting severe discrepancy at the time of an initial assessment or a minimum of a moderate discrepancy at the time of a reassessment between ability and achievement in basic reading skill, reading comprehension, mathematical calculation, mathematical reasoning, written expression, oral expression, or listening comprehension

Speech/Language Disabilities

- documentation, both formal and informal, that speech, voice, or language is significantly delayed for age or deviant from normal population

Hearing Impaired

- audiological assessment
- documentation of adverse affects on educational performance

Visually Handicapped

- vision assessment
- documentation of adverse affects on educational performance

Physically Impaired

- medical documentation of health impairment
- documentation of adverse affects on educational performance

Mentally Handicapped

- intellectual assessment
- adaptive behavior assessment

Other Health Impaired - Autistic

- medical documentation of health impairment or autism
- documentation of adverse affect on educational performance

Emotionally/Behaviorally Disturbed

- behavior rating scale or other clinical instrument
- data documenting existence of condition over an extended period of time in a variety of settings
- data documenting adverse affects on educational performance

Early Childhood Special Education

- documentation in one of the disability areas or, documentation of a medically diagnosed syndrome or condition known to hinder normal development, an overall delay in development or delay in two or more areas of development
- identified through norm referenced instruments
- documented systematic observation in the child's natural setting
- developmental history
- one other assessment procedure conducted on a different day than the norm referenced or medical assessment (i.e., parent report, language sample, criterion referenced instrument, or developmental checklists)

Deaf/Blind

- hearing evaluation
- vision evaluation
- standardized assessment verifying a developmental or functional delay

Overrides

Overrides must contain data such as test information, samples of classroom work, and observation data supporting the existence of a handicapping condition.

APPENDIX C

EXAMPLES OF UNACCEPTABLE PRACTICES (FUNDS MAY BE RECAPTURED)

The following are a few selected examples of unacceptable practices and are not intended to be all inclusive.

I. Assessments are incomplete.

A. Documentation is lacking, e.g.:

1. there is no assessment information in file;
2. there is no adaptive behavior assessment for educably or mentally handicapped students;
3. there are no behavior rating scales or clinical instruments for students served for severe emotional disturbance;
4. a learning disabled student does not have both an ability measure and an achievement measure.

B. Tests administered are not appropriate for determining eligibility, e.g.:

1. curriculum based measurement is used exclusively for learning disabilities or mentally handicapped;
2. a Wide Range Achievement Test is used exclusively for a learning disability achievement measure;
3. a Peabody Individual Achievement Test is used exclusively for a learning disabilities achievement measure;
4. the Slossen is used exclusively as an ability measure;
5. the Battele is used exclusively for early childhood special education.

II. Student is placed in a special education program because of chemical dependency, bulimia or anorexia, attention deficit hyperactivity disorder, truancy, pregnancy, obesity, etc., but has no documented handicapping condition, e.g.:

- A. an obese child is given developmental adapted physical education without documentation of the existence of a handicapping condition such as other health impaired;**

- B. a student has been provided emotional/behavioral disturbances services in a residential program for chemical dependency without an emotional/behavioral disturbances assessment or other documentation supporting the existence of a handicapping condition;
 - C. an elementary school student who is frequently absent is placed in a learning disabilities program prior to attempts to correct absenteeism.
 - III. A student is served on an interim individual educational plan without documentation of eligibility.
 - IV. Level I students are claimed on a teacher's class list, e.g.:
 - A. a student who has been terminated from Level II or III service and put on follow-up is claimed on the child count;
 - B. a student who is being assessed is counted on the child count.
 - V. A district places a student in special education even though the student is not eligible according to district criteria, e.g.:
 - A. district eligibility criteria requires a score on a language test that is 2 standard deviations from the mean. A student is provided with a language even though the test score was only 1.5 standard deviations from the mean;
 - B. a student is placed in an educably mentally handicapped program with a borderline intellectual score and an adaptive behavior score in the normal range.
 - VI. A team override is used to place a student in special education without data to support the team decision that the formal assessment was inconclusive, e.g.:
 - A. no supportive information from the student's classroom teacher or parents;
 - B. no work samples or group test scores;

C. no evidence of significant discrepancies in the required areas.

VII. A student has no current individual educational plan, e.g.:

A. no individual educational plan is found for a level II student;

B. there is no evidence that an individual educational plan meeting or an annual review has been held in the last year.