Pursuant to Section 616(b)(2)(C)(i) of the Individuals with Disabilities Education Act and 34 C.F.R. Section 300.602(b), states are required to make determinations annually on the special education performance of districts within the state in relation to established targets found in the State Performance Plan (SPP), as well as compliance indicators established by the US Office of Special Education Programs (OSEP).

States must make determinations consistent with the same levels used by OSEP in reporting state determinations as follows:

1. *Meets Requirements;*
2. *Needs Assistance;*
3. *Needs Intervention; or*
4. *Needs Substantial Intervention.*

The Kentucky Department of Education (KDE), Division of Learning Services (DLS) used the following compliance Indicators found in the SPP for making district determinations based on data and performance:

* Indicator 4B – Disproportionate Out-of-School Removals over 10 days.
* Indicator 9 – Disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification.
* Indicator 10 – Disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.
* Indicator 11 – Percent of children with parental consent to evaluate, who were evaluated within State-established timelines.
* Indicator 12 – Percent of children referred by Part C (Kentucky’s First Steps Program) at least 90 days prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthday.
* Indicator 13 – Percent of youth age 16 plus with IEPs with measurable, annual IEP goals and transition services.
* Indicator 15 – General supervision system (including monitoring, complaints and hearings ) identifies and corrects noncompliance as soon as possible, but in no case later than one year from identification. (This Indicator is weighted 2 in the scoring rubric which means failure to meet this requirement alone results in a Determination no better than Needs Assistance.)
* Indicator 20 – District-level data were submitted in a timely and accurate manner, according to state guidelines, using the Secure File Transfer (DoSE Upload) web application or other approved methods of submission.

The following explanations describe how the Division of Learning Services measures whether a district meets or does not meet specific requirements for indicators, waivers, hearings, audits, or is determined as Persistent Failure to Comply/Not Able to Comply, and results of On-Site Monitoring Visits.

**Determination Indicators:**

|  |  |
| --- | --- |
| **Indicator 4B:** | *Disproportionate Out-of-School Removals by race greater than 10 Days*  **Met Target**: Children with disabilities were not subject to out-of-school removals for more than 10 days, in any race category, at a rate significantly discrepant from the statewide rate of out-of-school removals of children with disabilities for greater than 10 days  **Did Not Meet Target**: Children with disabilities in one or more race categories, were subject to out-of-school removals for more than 10 days at a rate that was significantly discrepant from the statewide rate for out-of-school removals for more than 10 days. |
| **Indicator 9** | *Disproportionate representation in any race category that is the result of inappropriate identification*  **Met Target**: Students with disabilities were not disproportionately identified due to inappropriate identification policies, procedures, or practices based on race/ethnicity  **Did Not Meet Target**: Students with disabilities were disproportionately identified due to inappropriate identification policies, procedures, or practices in at least one race/ethnicity |
| **Indicator 10** | *Disproportionate representation in any race category for specific disabilities that is the result of inappropriate identification*  **Met Target**: Students with disabilities were not disproportionately identified in the specified disability categories due to inappropriate identification policies, procedures, or practices based on race/ethnicity  **Did Not Meet Target**: Students with disabilities were disproportionately identified in at least one of the specified disability categories due to inappropriate identification policies, procedures, or practices in at least one race/ethnicity |
| **Indicator 11:** | *Determine eligibility within State established timelines.*  **Met Target**: District met timelines in determining eligibility 100% of the time.  **Did Not Meet Target**: District did not meet timelines in determining eligibility 100% of the time. |

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| **Indicator 12:** | *Part C to Part B Referral: Eligibility Determination made and IEP developed and implemented by third birthday.*  **Met Target**: All children receiving services under Part C of the IDEA have their eligibility for services under Part B determined and when eligible, had an IEP developed and implemented no later than the child’s third birthday.  **Did Not Meet Target**: Not all children receiving services under Part C of the IDEA had their eligibility for services under Part B determined and, or had an IEP developed and implemented by their third birthday if eligible for services. |
| **Indicator 13:** | *Youth age 16 and older have IEPs with all required postsecondary transition requirements in place.*  **Met Target**: All youth age 16 and older have IEPs with all required postsecondary transition requirements in place.  **Did Not Meet Target**: Not all youth age 16 and older have IEPs with all required postsecondary transition requirements in place. |
| **Indicator 15:** | *General supervision: District corrects noncompliances no later than one year from notification.*  **Met Target**: The district corrected all findings of noncompliance within one year of notification of the noncompliance by the KDE.  **Did Not Meet Target**: The district did not correct all findings of noncompliance within one year of notification of the noncompliance by the KDE. |
| **Indicator 20:** | Data are submitted in a timely and accurate manner.  **Met Target**: District submits accurate reports with no more than one report past its due date.  **Did Not Meet Target**: District submits two or more reports past their due date or submits reports that fail to accurately report required information. |
| **Waivers:** | *General supervision*: Required waivers to state regulations for class size, case load, program teacher assignment and shortened school day are in place.  **Met Target**: District has requested and been approved for any variance from regulations relative to class size, caseload, teacher assignment/certification and shortened school day.  **Did Not Meet Target**: District is in violation of state regulations relative to class size, caseload, teacher assignment/certification or school day and has not requested or was not given a waiver to the requirement. |

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| **Hearings:** | *General supervision*: Decisions are implemented within a timely manner as specified in the Hearing Officer’s Order.  **Met Target**: District has fulfilled all requirements of an order from a Hearing Officer.  **Did Not Meet Target**: District has failed to fully implement orders of a Hearing Officer. |
| **Audits:** | *General supervision*: Policies, procedures, and practices related to financial operations are within all Federal and state requirements.  **Met Target**: District has no audit findings of failure to meet requirements and has submitted required financial reporting.  **Did Not Meet Target**: District has audit findings of inappropriate policies, procedures, and practices and or has failed to appropriately report expenditures. |

**Additional Factors Outside the Determination Scoring Rubric Process**

|  |  |
| --- | --- |
| **Persistent Failure or Not Able to Comply:** | *General Supervision*: District is under a Corrective Action Plan or Orders of Hearing Officer or otherwise found by KDE to be in violation of the IDEA or other Federal or State Laws and regulations for three (3) or more consecutive years for the same issue, and KDE has determined that the district has failed to comply, or, after two (2) or more years, KDE has determined the district is not able to comply.  **Met Target**: District complied with all Corrective Action Plans or Decisions of a Hearing Officer on a timely basis and provided sufficient documentation to demonstrate it is making substantial effort and progress to comply.  **Did Not Meet Target**: District fails or is not able to comply with a Corrective Action Plan or Decisions of a Hearing Officer or to meet the requirements of the IDEA as determined by KDE. |
| **On-Site Monitoring Visit:** | *General Supervision*: District has received an On-Site Monitoring Visit due to specific criteria resulting in **Findings of Non-Compliance** (*Needs Assistance,* *Needs Intervention, or Needs Substantial Intervention*). These **Findings** are independent of the normal *‘District Determination Process’* and may be used to justify any level of Determination based on the level of compliance found by the KDE monitoring team.  **Met Target**: On-Site Monitoring team found district to be in 90.0% compliance or more of areas reviewed.  **Did Not Meet Target**: On-Site Monitoring team found district to be less than 90.0% compliance of areas reviewed. |

**Criteria for Local District Determination:**

A finding of ***Persistent Failure to Comply/Not Able to Comply*** supersedes all other factors used in the Determinations process and is documented on the *Determinations Scoring Rubr*ic as either ***No Finding*** or ***NSI***. A status of ***No Finding*** means the district’s Determination will be based on other factors described below. A status of ***NSI*** means the district has been identified in this category and will have a Determination of Needs Substantial Intervention(***NSI***).

When a district has an ***On-Site Monitoring Visit*** with a Finding of Non-Compliance, this supersedes the results of the *Determinations Scoring Rubric* but not the finding of ***Persistent Failure to Comply/Not Able to Comply***. The Determinations Scoring Rubric documents the decision of the monitoring team as: ***MEETS, NA, NI, NSI or No Visit***. When the monitoring team finds non-compliances, the percentage of Non-compliance fixes the level of the district’s Determination. Determinations under this category can be Meets (***MEETS***), Needs Assistance (***NA1/NA2***), Needs Intervention (***NI1/NI2/NI3***), or Needs Substantial Intervention (***NSI***). If the monitoring team calculates the percentage of compliance as 90.0% or greater ***MEETS*** is documented on the Determinations Scoring Rubric and the district’s Determination is based on other factors. If the monitoring team determines that a district Needs Assistance (***NA***), then depending on the district’s prior year Determination the new Determination could be ***NA1, NA2, NI1, NI2, NI3 or NSI*** based on the progression of Determinations noted on the *Determination Scoring Guide* *Table* below. If the monitoring team determines that a district Needs Intervention (***NI***) then depending on the district’s prior year Determination the district could have a new Determination of ***NI1, NI2, NI3 or NSI***. Finally, if the monitoring team determines the district Needs Substantial Intervention (***NSI***) then their Determination will be ***NSI*** regardless of prior year Determinations.

Districts receive scores on the *Determinations Scoring Rubric* in each of four categories; ***Indicators***, ***Waivers***, ***Hearings***, and ***Audits***. The *Rubr*ic is used to assign a score to each of the categories and to document the KDE’s annual Determinations of each local district’s special education program.

* For the ***Indicators*** category a district will receive a *Cumulative Indicator Score* of **0**, **1**, **2**, or **3**. (Each of eight separate Indicators receives a score of **0** if the indicator meets state established criteria and **1** if the indicator fails to meet criteria. When the sum total of all 8 indicators is **0**, the *Cumulative Indicator Score* is **0**. If the sum total of all 8 indicators is **1**, the *Cumulative Indicator Score* is **1**. When the sum total of all 8 indicators is **2, 3,** or **4**, the *Cumulative Indicator Score* is **2**. When the sum total of all 8 indicators is greater than **4**, the *Cumulative Indicator Score* is **3**.
* For the ***Waivers***, ***Hearings***, and ***Audits*** categories, a district will receive in each category a score of **0** when state established criteria is met or **1** when the criteria is not met. The total combined possible score for these categories is **3** points on the *Determinations Scoring Rubric*.

***Persistent Failure to Comply/Not Able to Comply*** and ***On Site Monitoring Visit*** though included on the *Determinations Scoring Rubric* are independent of the rubric’s scoring matrix. Districts identified as ***Persistent Failure to Comply/Not Able to Comply*** receive a Determination of ***NSI*** regardless of their score on the *Rubric*. Districts with Findings of Non-Compliance resulting from an ***On Site Monitoring Visit*** can have a Determination of any level as determined by the results of on-site monitoring team and described in **Table A:** *Determinations Scoring Guide* contained in this document.

The total score a district can receive on the *Determinations Scoring Rubric* for ***Indicators, Waivers, Hearings and Audits*** range from a minimum of **0** to a maximum of **6** points**.** A *Cumulative Indicator Score* of **2 or more** across these categories means the district will have a Determination of something other than ***MEETS***.

Because the ***Indicators*** category covers a broader range of program issues this area is weighted to allow a score of up to 3 points on the *Determinations Scoring Rubric as noted above*. When a district fails to meet the state established target for any single indicator, a score of 1 is reported on the *Scoring Rubric* for Indicators. When a district fails to meet established targets on 2 to 4 of the indicators, a score of 2 is entered, while a district failing to meet established targets on more than 4 Indicators receives a score of 3 on the *Scoring Rubric*. A score of 2 or more on the *Determinations Scoring Rubric* fails to meet program requirements and will result in a determination of ***Needs Assistance (NA1/NA2), Needs Intervention (NI1/NI2/NI3) or Needs Substantial Intervention (NSI)*** depending on the number of years the district has failed to meet requirements.

***Note****: Indicator 15 is weighted two times the value of other indicators. This means when a district fails to meet the established criteria for Indicator 15 the district will score at least 2 on the Determinations Scoring Rubric and as a result will fail to meet special education program requirements* (*See* **Table A:** *Determinations Scoring Guide* on the following page).

**Table A:** *Determinations Scoring Guide*

|  |  |  |
| --- | --- | --- |
| **Score from the Determination Scoring Rubric** | **Determination** | |
| 0-1 | ***Meets Requirements* *(MEETS)*** | |
| 2 through 6 | ***Needs Assistance (NA)*** | |
| **NA1** | * First year in Needs Assistance. |
| **NA2** | * Second consecutive year of Needs Assistance. |
| ***Needs Intervention (NI)*** | |
| **NI1** | * Third consecutive year of Needs Assistance. |
| **NI2** | * Fourth consecutive year of Needs Assistance. |
| **NI3** | * Fifth consecutive year of Needs Assistance. |
| ***Needs Substantial Intervention (NSI)*** | |
| 1. Sixth Consecutive year of Needs Assistance; or 2. Finding of ***Persistent Failure or Not Able to Comply***;or 3. Results of an On-Site Monitoring Visit (Based on Monitoring Team Findings described Below) | |

**Table A:** *Determinations Scoring Guide (Continued)*

|  |  |
| --- | --- |
| **Persistent Failure to Comply or Not Able to Comply** | Districts that are identified as ***Persistent Failure to Comply*** or ***Not Able to Comply*** will have a Determination of ***Needs Substantial Intervention*** (NSI) regardless of any other factors. |
| **Results of an On-Site Monitoring Visit** | A district may have a statusin this area of ***No Visit***, ***MEETS, NA, NI or NSI*** documented on the ***Determinations Scoring Rubric***. A status of ***No Visit*** or ***MEETS*** means other factors will be used to decide the district’s Determination. However, a status of ***NA, NI*** or ***NSI*** in this category will dictate a Determination as follows regardless of the district’s score on the rubric.   * An *On-Site Monitoring Visit* resulting in a compliance rate of **90% or more** is reported as ***MEETS*** and will result in a Determination based on the *Determinations Scoring rubric*. * An *On-Site Monitoring Visit* resulting in a compliance rate of 75% but less than 90% has a status on the rubric of ***NA.*** This means the district’s Determination will be based on the prior year Determination as described above under ***Needs Assistance***. * An *On-Site Monitoring Visit* resulting in a compliance rate of 50% but less than 75% has a status on the rubric of ***NI***. If the district’s prior year Determination was ***MEETS*, NA1, or NA2**, the new Determination will be ***NI1***. If the prior year Determination was ***NI1*** the Determination will be ***NI2*.** If the prior year Determination was ***NI2*** the Determination will be ***NI3***. If the prior year Determination was ***NI3*** then the Determination will be ***NSI***. * An *On-Site Monitoring Visit* resulting in a compliance rate of less than 50% will have a Determination of ***NSI*** regardless of the prior year Determination. |

**Determination Levels:**

**Meets Requirements (***MEETS***)**

District scored either **0** or **1** on the *Determinations Scoring Rubric*.

**Needs Assistance** (*NA*)

District scored a **2 or more** on the *Determinations Scoring Rubric*. If this is the first year of scoring 2 or more on the *Determinations Scoring Rubric* the district Determination will be ***NA1***. The 2nd consecutive year of scoring **2 or more** on the rubric (or a prior year Determination of ***NA1***), the district Determination will be ***NA2***.

**Needs Intervention** (*NI*)

District scored a **2 or more** on the *Determinations Scoring Rubric*. If this is the 3rd consecutive year of scoring 2 or more on the *Determinations Scoring Rubric* (or a prior year Determination of ***NA2***) the district Determination will be ***NI1***. The 4th consecutive year of scoring **2 or more** on the *Determinations Scoring Rubric* (or a prior year Determination of ***NI1***) results in a Determination of ***NI2.*** The 5th consecutive year of scoring **2 or more** on the *Determinations Scoring Rubric* (or prior year Determination of ***NI2***) results in a Determination of ***NI3***.

**Needs Substantial Intervention** (*NSI*)

* District scored **2 or more** on the *Determinations Scoring Rubric*. If this is the sixth consecutive year of scoring **2 or more** on the rubric (or the prior year Determination was NI3) the district Determination will be ***NSI***; or
* If the district is found to meet the criteria for **Persistent Failure to Comply/Unable to Comply***, the district Determination will be* ***NSI****.*

**Additional Determination Factors**

A district may be placed in one of the above Determination levels outside of the *Determination Scoring Rubr*ic based on the results of an **On-Site Monitoring Visit**. In addition when a district is determined to meet the criteria for **Persistent Failure to Comply/Unable to Comply***,* the district Determination is Needs Substantial Intervention (***NSI***) regardless of any other factors.

The results of an **On-Site Monitoring Visit** report a percentage of compliance. Based on that percent of compliance a district may have a Determination of Meets (***MEETS***), Needs Assistance (***NA1*** or ***NA2*** depending on number of years as Needs Assistance), Needs Intervention (***NI1***, ***NI2*** or ***NI3*** depending on the number of consecutive years as Needs Assistance), or Needs Substantial Intervention (***NSI***) regardless of the score on the *Determination Scoring Rubric*. Determinations that are pursuant to the findings of an **On-Site Monitoring Visit** are outlined in **Table A:** *Determinations Scoring Guide* above.

**Enforcement Actions:**

The IDEA regulations at 34 C.F.R. Section 300.600(a) specifically designates the enforcement actions that states must apply after a determination is made.

**Table B:** *Enforcement Actions*

| **Determination** | **Level** | **Enforcement Actions** |
| --- | --- | --- |
| **Meets**  **Requirements** | ***MEETS*** | None |
| **Needs**  **Assistance** | ***NA1*** | None |
| ***NA2*** | **KDE** shall take one or more of the following actions:   * Advise the district of available resources of technical assistance to address areas in need of assistance * Direct the use of State-level funds in the area(s) in which the district needs assistance * Identify the district as a high-risk grantee and impose special conditions on the district’s Part B grant |
| **Needs**  **Interventions** | ***NI1/NI2*** | **KDE** shall take one or more of actions listed above for **NA2**. |
| ***NI3*** | In addition to actions listed under ***NA2*** that **KDE** may take, **KDE** shall take one or more of the following actions:   * Require the district to prepare a corrective action plan or improvement plan if KDE determines the district should be able to correct the problem within one year * Require the district to enter into a compliance agreement under the General Educations Provisions Act (GEPA), if KDE believes the district cannot correct the problem within one year * For each year of the determination, withhold not less than 20% and not more than 50% of the district’s awards under Part B of the IDEA, until the district has sufficiently addressed the intervention area(s) * Seek to recover funds under GEPA * Withhold in whole or in part, further payments to the district of IDEA, Part B funds * Refer the matter for appropriate enforcement action |
| **Needs**  **Substantial Intervention** | ***NSI*** | **KDE** shall take one or more of the following actions any time it determines a district needs substantial intervention in implementing Part B of IDEA, or if there is a substantial failure to comply with any condition of the district’s eligibility under Part B:   * Recover funds under GEPA * Withhold in whole or in part, further payments to the district under Part B of the IDEA * Refer the case to the Office of the Inspector General at the U.S. Department of Education * Refer the matter for appropriate enforcement action |