

LEGISLATIVE COMMITTEE MINUTES

SB27

Bill as Introduced

SB 27 - AS INTRODUCED

2013 SESSION

13-0748
04/03

SENATE BILL **27**

AN ACT relative to monitoring by the department of education of programs for children with disabilities.

SPONSORS: Sen. Stiles, Dist 24; Sen. Odell, Dist 8; Sen. Bradley, Dist 3; Sen. Fuller Clark, Dist 21; Rep. Rosenwald, Hills 30; Rep. DiMartino, Belk 2; Rep. Myler, Merr 10; Rep. Grenier, Sull 7; Rep. Shaw, Hills 16

COMMITTEE: Health, Education and Human Services

ANALYSIS

This bill requires the department of education to evaluate the effectiveness of the special education program approval and monitoring system in 2015.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to monitoring by the department of education of programs for children with disabilities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

- 1 1 Special Education; Program Monitoring. Amend RSA 186-C:5, IX to read as follows:
- 2 IX. The department, with input from the advisory committee on the education of
- 3 children/students with disabilities, shall select and contract with an independent, nationally
- 4 recognized organization in program evaluation and quality assurance to evaluate in 2010, **2015**, and
- 5 decennially thereafter, the effectiveness of the program approval and monitoring system, including
- 6 whether it is carrying out activities in RSA 186-C:5 in an efficient manner. Such organization shall
- 7 submit recommendations for any improvements to the commissioner, the state board of education,
- 8 the governor, and the general court within 90 days of completing the program evaluation.
- 9 2 Effective Date. This act shall take effect 60 days after its passage.

SB 27 - AS AMENDED BY THE SENATE

03/14/13 0736s

2013 SESSION

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9 *before September 1, 2013, the department shall submit a written response to the report*
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15 *shall also provide an explanation for any actions the department will not implement or*
16 *complete during the plan's timeframe. On or before December 30, 2013 and June 30, 2014,*
17 *the department shall submit a report of its progress toward completing its plan. The plan*
18 *and reports shall be submitted to the governor, to the chairpersons of the senate and house*
19 *committees with jurisdiction over education policy, to the state advisory committee for the*
20 *education of children with disabilities established in RSA 186-C:3-b, and to the state board*
21 *of education. For the 2015 evaluation, the department shall invite the same organization*
22 *that conducted the 2012 evaluation to respond to a request for proposals. The 2015*
23 *evaluation shall include feedback on the steps the department has taken in response to the*
24 *recommendations in the 2012 report. The department shall provide unimpeded access to*
25 *all documents requested by the organization, except as otherwise required by law.*

26 2 Effective Date. This act shall take effect 60 days after its passage.

SB 27 – FINAL VERSION

03/14/13 0736s
5June2013... 1990h

2013 SESSION

13-0748
04/03

SENATE BILL **27**

AN ACT relative to monitoring by the department of education of programs for children with disabilities and relative to the calculation of school building aid grants.

SPONSORS: Sen. Stiles, Dist 24; Sen. Odell, Dist 8; Sen. Bradley, Dist 3; Sen. Fuller Clark, Dist 21; Rep. Rosenwald, Hills 30; Rep. DiMartino, Belk 2; Rep. Myler, Merr 10; Rep. Grenier, Sull 7; Rep. Shaw, Hills 16

COMMITTEE: Health, Education and Human Services

AMENDED ANALYSIS

This bill requires the department of education to evaluate the effectiveness of the special education program approval and monitoring system in 2015. The bill also provides that certain funds received from charitable trusts, bequests, gifts, insurance policies, or grants shall be subtracted from total project costs in the calculation of school building aid grants.

Explanation: Matter added to current law appears in *bold italics*.
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SB 27 – FINAL VERSION

03/14/13 0736s
5June2013... 1990h

13-0748
04/03

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6 whether it is carrying out activities in RSA 186-C:5 in an efficient manner. Such organization shall
7 submit recommendations for any improvements to the commissioner, the state board of education,
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9 before September 1, 2013, the department shall submit a written response to the report
10 submitted by the organization that conducted the 2012 independent evaluation. The
11 written response shall include a detailed plan for how the department will address the
12 areas identified as needing improvement and the recommendations made in the initial
13 evaluation required under this section. The written response shall include specific steps
14 the department plans to take, along with a timeline for each step. The written response
15 shall also provide an explanation for any actions the department will not implement or
16 complete during the plan's timeframe. On or before December 30, 2013 and June 30, 2014,
17 the department shall submit a report of its progress toward completing its plan. The plan
18 and reports shall be submitted to the governor, to the chairpersons of the senate and house
19 committees with jurisdiction over education policy, to the state advisory committee for the
20 education of children with disabilities established in RSA 186-C:3-b, and to the state board
21 of education. For the 2015 evaluation, the department shall invite the same organization
22 that conducted the 2012 evaluation to respond to a request for proposals. The 2015
23 evaluation shall include feedback on the steps the department has taken in response to the
24 recommendations in the 2012 report. The department shall provide unimpeded access to
25 all documents requested by the organization, except as otherwise required by law.*

26 2 School Building Aid; Amount of Grant. Amend RSA 198:15-b, I(a)(2)(E) to read as follows:

27 (E) Funds received from charitable trusts, bequests, gifts, insurance policies,
28 federal grants, or grants from other state programs shall ~~[not be considered in]~~ **be subtracted from**

1 *total project costs when* computing grants under this paragraph.

2 3 New Subparagraph; School Building Aid; Amount of Grant. Amend RSA 198:15-b, I(a)(2) by
3 inserting after subparagraph (D) the following new subparagraph:

4 (E) Funds received from charitable trusts, bequests, gifts, insurance policies,
5 federal grants, or grants from other state programs shall be subtracted from total project costs when
6 computing grants under this paragraph.

7 4 Contingency. If HB 629-FN of the 2013 regular legislative session becomes law, then section 2
8 of this act shall take effect at 12:01 a.m. on the effective date of HB 629-FN and section 3 of this act
9 shall not take effect. If HB 629-FN does not become law, then section 3 of this act shall take effect as
10 provided in section 5 of this act and section 2 of this act shall not take effect.

11 5 Effective Date.

12 I. Sections 2 and 3 of this act shall take effect as provided in section 4 of this act.

13 II. The remainder of this act shall take effect 60 days after its passage.

LBAO
13-0748
Amended 06/11/13

SB 27 - FISCAL NOTE

AN ACT relative to monitoring by the department of education of programs for children with disabilities and relative to the calculation of school building aid grants.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, as amended by the House (Amendment #2013-1990h), as it is awaiting information from the Department of Education. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

Amendments



Amendment to SB 27

1 Amend the bill by replacing section 1 with the following:

2

3 1 Special Education; Program Monitoring. Amend RSA 186-C:5, IX to read as follows:

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9 submit recommendations for any improvements to the commissioner, the state board of education,
10 the governor, and the general court within 90 days of completing the program evaluation. *On or*
11 *before September 1, 2013, the department shall submit a detailed plan for addressing the*
12 *findings and recommendations of the 2010 evaluation required under this section. The*
13 *plan shall contain timelines for completion for each element of the plan. On or before*
14 *December 1, 2013 and May 1, 2014, the department shall submit reports on its progress*
15 *toward completing its plan. The plan and reports shall be submitted to the governor and*
16 *council, to the chairpersons of the senate and house committees with jurisdiction over*
17 *education, and to the state board of education. For the 2015 evaluation, the department*
18 *shall retain the same organization that conducted the 2012 evaluation. The 2015*
19 *evaluation shall determine whether the department has addressed the findings and*
20 *recommendations of the 2012 evaluation. The department shall provide unimpeded access*
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Committee Minutes

SENATE CALENDAR NOTICE
HEALTH, EDUCATION & HUMAN SERVICES

Senator Nancy Stiles Chairman
 Senator John Reagan V Chairman
 Senator Peggy Gilmour
 Senator Molly Kelly
 Senator Andy Sanborn

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: January 17, 2013

HEARINGS

Tuesday

1/22/2013

HEALTH, EDUCATION & HUMAN SERVICES

LOB 103

10:15 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

10:15 AM SB23

directing the school administrative unit legislative oversight committee to study the consolidation of school administrative units.

10:30 AM SB27

relative to monitoring by the department of education of programs for children with disabilities.

Sponsors:

SB23

Sen. John Reagan

SB27

Sen. Nancy Stiles
 Rep. Cindy Rosenwald
 Rep. Barbara Shaw

Sen. Bob Odell
 Rep. Lisa DiMartino

Sen. Jeb Bradley
 Rep. Mel Myler

Sen. Martha Fuller Clark
 Rep. James Grenier

**SENATE
HEALTH, EDUCATION AND HUMAN SERVICES
COMMITTEE**

Michael Ciccio, Legislative Aide

SB 27 – relative to monitoring by the department of education of programs for children with disabilities.

Hearing Date: 1/22/13

Time Opened: 10:30

Time Closed: 11:20

Members of the Committee Present: Senators Stiles, Reagan, Kelly, and Sanborn

Members of the Committee Absent: Senator Gilmour

Bill Analysis: This bill requires the department of education to evaluate the effectiveness of the special education program approval and monitoring system in 2015.

Sponsors: Sen. Stiles, Dist 24; Sen. Odell, Dist 8; Sen. Bradley, Dist 3; Sen. Fuller Clark, Dist 21; Rep. Rosenwald, Hills 30; Rep. DiMartino, Belk 2; Rep. Myler, Merr 10; Rep. Grenier, Sull 7; Rep. Shaw, Hills 16

Who supports the bill: Senator Stiles, Senator Reagan, Senator Martha Fuller Clark, Rep. DiMartino, Rep. M. MacKay, Sarah Aiken, Mike Skibbie, Denis Parker, Karen Rosenberg, Bonnie Dunham, Alan Pardy, Jennifer, Bertrand, Kirsten Murphy, and Carol Stamatakis

Who is neutral towards the bill: Santina Thibedeau (DOE)

Who opposes the bill: None

Summary of testimony presented in support:

Senator Stiles:

- This legislation would ask that we have additional review of the department of education and their capabilities of monitoring special education.
- We asked for an independent review of the department of education back in 2008-2009. The review has been finished and reported.

- The legislation was filed in response questions from my constituents and the DRC.

Michael Skibbie: Disabilities Rights Center

- This bill would accelerate the schedule for the next evaluation. The original statute required that outside evaluations would happen in 2010 and every ten years after.
- The evaluation needs to be moved up because the report showed significant deficiencies in the DOE's activities.
- The report showed the states own personal evaluation tool was poorly designed and does not calculate whether the services received meet the child's educational needs and does not address the question of the least restrictive environment.
- The report showed that the states own personal evaluation teams were overly focused on examining paperwork rather than actual observation of the services being received by students.
- The department does not have methods in place to verify the accuracy of their data. It is important that our next look happens before 10 years.
- We all benefit from accountability systems.
- The cost is a serious concern, but the total cost of special education in NH is 500 million. This is a small accounting tool to make sure that money is being spent wisely. This would be a frugal thing to do.
- In response to questions from the committee, Mr. Skibbie stated that the federal government has its oversight in special education (OSEP). However, we have our own state statute and that requires the DOE to oversee what is happening in the local districts and every ten years the DOE has to bring in an outside evaluator to see how they are doing in their oversight. He also stated that the outside evaluation system is successful in the sense that accountability systems do work. However, a more detailed approach would have the department provide a plan of improvement.

Bonnie Dunham:

- This bill will support children with disabilities and will provide valuable information to all the stake holders. Even when deficiencies aren't found a critical analysis of practices can still help improvement.
- The last review found that some things were working well and some things that need improvement. As a result of the last evaluation, the DOE brought the stake holders together to discuss some of the information in the report.
- OSEP likes it when states proactively get information from other sources about what they could be doing better to improve their program monitoring and procedures. The DOE started to implement changes based on the recommendations and it does not make sense to wait 10 years to see what is working.

Karen Rosenberg: Staff Attorney for the DRC

- Federal monitoring is done by OSEP and they have found that NH special education program has not complied with the federal rules.

- There are children who have specific learning deficiencies in reading and they still can't read by the time they are in high school; while there have been no adjustments made in the child's IEP.
- Children are not getting their evaluations in a timely manner. Children are supposed to receive evaluations every three years.
- 100 percent of transition planning is supposed to be done; slightly over 50 percent of children have transition plans in place.
- There is a large disparity amongst the districts as far as performance.
- In response to questions from the committee, Ms. Rosenberg said there were about 30,000 special education students in the state. She stated that the cost to the state would be great if we are unable to help our students who need services because if they cannot graduate and get good jobs we will be paying for it down the line with Medicaid and other services.

Alan Pardy: NH association of special education administrators

- The monitoring does impact all kids and all districts even though it only monitors a few districts a year.
- Historically, this process has not only required monitoring for compliance, but also looked at school improvement. We would like to see school improvement as part of the process and it should be looked at objectively by an outside firm.

Jennifer Bertrand: NH Council on Developmental Disabilities

- The Council on Developmental Disabilities fully supports SB 27. The report should happen sooner; so it can benefit students who are in school now.
- Currently, file reviews are the nearly the only evaluation technique, which focuses on compliance and not whether children with disabilities are receiving the proper services. This legislation would help us see if our children are receiving FAPE in the least restrictive environment.
- In response from questions from the committee, Ms. Bertrand stated that we have always had to pay for special education. We used to put people in institutions which cost us a whole lot more money and people were living in reprehensible conditions.

Summary of testimony presented neutral towards the bill:

Santina Thibedeau: DOE

- The bureau of special education receives federal funds and they monitor us through OSEP on annual basis for compliance and performance.
- This legislation would require an evaluation that is different because it would require bringing in an outside entity to come in and look at our practices.
- We have our report from a few years ago and we are working with a forum group to go through the recommendations.
- In response to questions from the committee, Ms. Thibedeau said the last report cost \$75,000 and was done through an RFP process.

Summary of testimony presented in opposition:

- None

Fiscal Note: NA

Action: The committee took the bill under advisement

MJC

Date hearing report completed: 01.23.13

[file: SB 27 report]

Speakers

Testimony

**Senate Bill 27, relative to monitoring by the department of education
of programs for children with disabilities**

**Testimony of Michael Skibbie,
Policy Director, Disabilities Rights Center**

The Disabilities Rights Center supports Senate Bill 27, which would accelerate the schedule for the next independent evaluation of the effectiveness and efficiency of the Department of Education's program approval and monitoring system. Current law provides that such evaluations be conducted every 10 years; the bill would provide that the next evaluation be conducted in 2015.

In 2012, the first independent evaluation of the department's activities in this area was conducted. The evaluation found that there were significant deficiencies in the department's activities. As of the date of this memorandum, it does not appear that the department has developed a plan to address those deficiencies, although the Disabilities Rights Center has been urging that a plan for improvement be put into place since June of last year.

Public education in New Hampshire is a shared state and local responsibility. A significant amount of state funding goes to support local districts' efforts in both general and special education. The state's share of funding is greater in cases of more significant and expensive educational disabilities. Most estimates of the total cost of special education in New Hampshire are around \$500 million, born by a combination of federal, state, and local taxpayers. To ensure that those dollars are being spent effectively and efficiently, federal and state law requires the state Department of Education to have in place a process "for the approval and monitoring of programs of education that are maintained by school districts, regional special education centers, and private organizations or state facilities for the benefit of children with disabilities." RSA 186-C:5 I (a). The process used in New Hampshire relies primarily on a contractor, Southeastern Regional Education Service Center (SERESC), and costs approximately \$1.5 million each biennium.

New Hampshire law also requires that beginning in 2010 the Department's process itself be evaluated every ten years by an independent organization. The first evaluation was delayed due to legal errors in the process of selecting the independent evaluator; the final report of its results was issued in May of 2013. Because the

evaluation revealed significant deficiencies in the Department's process, the bill before you would require that the next evaluation be conducted in 2015.

To illustrate the significant problems with the Department's process, I will describe 3 of the findings about that procedure in the report. Bear in mind that the two most important requirements of special education law are that 1) children must receive a free and appropriate public education (FAPE) and 2) that their education be in the least restrictive environment appropriate to their needs.

The first procedural finding to highlight relates to the evaluation tool being used by the state's teams when they go into a local district. An evaluation tool is fundamental to the process – it determines what information is collected and how it is evaluated. The independent evaluation found that the tool is so poorly designed that it does not analyze whether services received by a child are calculated to meet their educational needs, and does not even address the question of least restrictive environment. Those are the two most significant components of special education.

Secondly, this poorly designed process was applied by state team members in an inconsistent manner, apparently due to poor leadership, inconsistent team membership, and lack of clarity about the standards they were to apply. In some instances teams relied on reports of compliance with standards rather than actual documentation of compliance.

Lastly, the process used by the state teams was overly focused on examining paperwork rather than on interviews and observation of the actual services being received by students. They failed to look at whether educational progress was being made, and in many instances did not even examine whether children were actually receiving the services in their education plans.

In addition to the problems with the procedure used by the state's teams, the report finds that the Department itself does not consistently determine whether districts that need to make changes are in fact making those changes. So even in those cases where the process works initially, the follow-up is so inadequate that district practices in need of improvement can continue.

The report also finds that the Department completely fails to do something the statute requires: to have methods in place to verify the accuracy of the data it uses in its evaluations of local districts and the system as a whole. The data collected by the Department is also used to make reports to the federal government. Evaluators found New Hampshire's data to be questionable in its accuracy as compared to the rest of the country.

Perhaps the most important observation made by the evaluators is that it appears that the process used by the Department fails in the most important respect – it has failed to close the achievement gap between students with and without disabilities. Members of the Committee may share the widely held impression that wide achievement gaps between children with and without disabilities are inevitable, but the evidence is to the contrary. With appropriate services and supports, the overwhelming majority of children with disabilities are able to achieve proficiency. The variation in the degree of achievement gaps among districts in New Hampshire makes it obvious that effective educational practices make a difference with all children, especially those receiving special education services.

Given the importance of the quality of education of children with disabilities in this state, it is important that the next evaluation be conducted relatively soon so that the department's efforts to improve its performance can be assessed. Waiting three years will allow the Department sufficient time to make corrections, but would not allow an inadequate process to remain in place for an extended period. When we know that there are significant improvements needed, it would be unfair and irresponsible to wait until 2022 to conduct the next evaluation. Doing so would allow children who were in second grade at the time of the evaluation to graduate before there is a determination of whether things have improved.

Thank you for considering the view of the Disabilities Rights Center. Please contact me if you have questions.

**Excerpts from the May 31 Final Report of the
Evaluation of New Hampshire's Program Approval
and Monitoring System for the Education of Children
with Disabilities**

Full report and appendices available on the Department of Education website at
http://www.education.nh.gov/instruction/special_ed/whats.htm

Provided by the Disabilities Rights Center

Front Matter and Executive Summary

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

May 31, 2012

Submitted to:
New Hampshire Department of Education
Bureau of Special Education
101 Pleasant Street
Concord, NH 03301

Submitted by:
Data Driven Enterprises
11184 Huron Street, Suite 17
Northglenn, CO 80234
www.datadrivenenterprises.com

Project Staff:
Susan Wagner, Ph.D.
Mark Mlawer
Michael Harris
Michael Warych

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Executive Summary

Background

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

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

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

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

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

This report answers these ten questions.

Evaluation Highlights

Positive Points:

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

Areas for Improvement:

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

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

Additional Points Raised

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

Recommendations are offered in Section X.

Recommendations

Section X

Recommendations

Based on the investigation conducted over the past several months and conclusions offered related to the evaluation questions detailed above, the external evaluators offer the following recommendations as means of improving New Hampshire's special education monitoring procedures and practices.

During conversations with NHDOE staff members,²⁰⁶ SERESC Focused Monitoring and Program Approval staff, parent and advocacy groups (including the Disability Rights Center and the state's Parent Information Center), and the State Advisory Committee, the evaluators also solicited recommendations. Relevant recommendations from these parties are also noted separately within each of the subsections below.

A. Use of Data in Focused Monitoring and Program Approval

1. **Expand the use of data to guide the selection of districts for Focused Monitoring reviews.** In addition to achievement gap and size of the district, consider factors such as compliance history (prevalence/gravity of IDEA complaint decisions and due process hearing results) and performance on State Performance Plan indicators (especially 1, 2, 3C, and 5).
2. **Expand the use of data to guide Focused Monitoring and Program Approval methodologies in districts and facilities being visited.** Prior to visiting a district or private school, NHDOE and SERESC staff members should collaborate on a facilitated review and drill-down of all relevant special education data from the district or facility. The purpose of this pre-visit data review would be twofold: 1) to gain a thorough understanding of the district or facility strengths and apparent areas of difficulty, and 2) to develop specific compliance hypotheses (based on areas of poor performance) that will guide the review team's activities. Compliance hypotheses, which should vary according to each district and facility's unique data, should be developed in substantive areas most closely related to improving student outcomes with a particular emphasis on each student's receipt of FAPE in the LRE.
3. **Create purposeful samples of students for each compliance hypothesis.** The state's current practice of randomly selecting student files for review in both Focused Monitoring and Program Approval does not allow the best opportunity for identifying noncompliance. By selecting purposeful samples, the state would begin focusing its review activities on students who have the

²⁰⁶ Four of the eight NHDOE employees who were interviewed as part of the evaluation process offered recommendations, while the others declined to make any recommendations. One of the SEA staff members in the latter group commented, "Any concerns have been addressed. [The Focused Monitoring and Program Approval processes] are good and solid."

greatest likelihood of being affected by a district or facility's noncompliance. Multiple sets of district data, which are already collected by NHDOE, should be cross-referenced and disaggregated by student disability label, race/ethnicity, environment, and other criteria to identify these purposeful samples.

In addition to the evaluators' recommendations, see Display X-1 for additional recommendations made by others.

Display X-1. Subsection A Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- NHDOE: Increase the number of districts reviewed.
- NHDOE: Increase the use of data to guide reviews.
- SERESC: "The system of selection is probably flawed," but it is "in part, DOE-driven." NHDOE and SERESC need to work together to define priorities and work toward those goals.
- SERESC: Increase the sample sizes.
- Parent Group: Increase the number of districts site visits.
- Parent Group: Re-visit selection of the achievement gap as the State's Key Performance Indicator.
- SAC: Increase the number of FM reviews each year.
- SAC: Increase the amount of baseline data used in FM reviews.
- SAC: "Some districts go unmonitored, except for indicators, for years and years." Change that practice to include expanded, direct, and more frequent monitoring of districts not selected for Focused Monitoring on-site reviews.

B. Focused Monitoring and Program Approval Instruments and Methodology

- 1. Ensure proper training in IDEA and state special education requirements prior to any individual's participation in Focused Monitoring or Program Approval.** Due to the various backgrounds of individuals currently participating in the Focused Monitoring and Program Approval processes, the state cannot be assured that each one is adequately prepared to properly conduct file review activities and other on-site activities. Evaluators observed confusion over certain requirements among review teams: proper training would help eliminate this confusion and ensure a greater likelihood of accurate, appropriate monitoring results.
- 2. Eliminate "one-size-fits-all" compliance review documents.** As discussed in Subsection A, compliance hypotheses should guide the state's review activities for both Focused Monitoring and Program Approval. In keeping with this recommendation, the instruments used to for file reviews should be specific to the compliance hypotheses developed for each district and facility.

3. **Ensure that Focused Monitoring and Program Approval compliance review instruments accurately reflect federal and state requirements.** The general instruments currently in use contain some approximations of federal requirements, and some items do not reflect federal or state requirements. The former should be corrected, and the latter should be eliminated.
4. **Separate Focused Monitoring and Program Approval from other school improvement and/or accreditation activities.** In Focused Monitoring, activities that do not relate to the identification of noncompliance should not be included (i.e., Achievement Team data reviews, improvement planning, etc.). While these activities have positive aspects, the appropriate time for improvement planning within an IDEA Focused Monitoring context is *after* the state has alerted the district or facility to one or more findings of noncompliance. In Program Approval, the state's identification of noncompliance should be separated from private school accreditation activities.
5. **Increase the sample size for file reviews and case studies.** In order to ascertain a district or facility's compliance with IDEA requirements, one or two files per school is not adequate when many districts serve hundreds of students with disabilities. While it is rarely feasible to review every student's file, it is unlikely that systemic noncompliance can truly be identified using the limited samples of the current Focused Monitoring and Program Approval processes.
6. **Increase the amount of time allotted for compliance review activities.** By eliminating non-IDEA compliance components of the current Focused Monitoring and Program Approval processes, review teams would have additional time for appropriate reviews of student files, purposeful interviews with school staff, observations, and other focused activities to facilitate the identification of noncompliance. Even so, appropriate monitoring activities are likely to require more than the current one or two days in all but the smallest districts and private facilities.
7. **Employ additional strategies in the identification of noncompliance.** Rather than accepting verbal assurances and statements from district and facility staff during compliance reviews, the state should develop and implement a means of collecting information from school staff through a formal interview process. The interviews should not be the same for each staff member; in order to properly support a finding of noncompliance, they should be guided by file review results for individual students in each of the compliance hypotheses.
8. **Increase the involvement of NHDOE in the Focused Monitoring and Program Approval compliance reviews.** As observed by the evaluators, review teams are not always in agreement over how to interpret certain IDEA requirements or how to determine whether a certain set of facts connote noncompliance in a particular student's case. More NHDOE involvement would allow the SEA to guide compliance review activities and be correctly viewed as the final arbiter of compliance/noncompliance in the monitoring

context. This would also eliminate the practice of making findings of noncompliance based on the consensus of the review team.

In addition to the evaluators' recommendations, see Display X-2 for additional recommendations made by others.

Display X-2. Subsection B Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- SERESC: Focused Monitoring and Program Approval visits need to be more closely aligned. Teams also need to increase the intensity of the file reviews conducted at private schools.
- SERESC: Provide more technical assistance leading up to each Program Approval visit.
- SERESC: Review more districts using the Focused Monitoring process.
- SERESC: Include structured interviews in the Focused Monitoring and Program Approval processes.
- Parent Group: Shift the focus away from procedural compliance to more substantive issues.
- Parent Group: Increase the examination of standards related to improving educational results and functional outcomes.
- Parent Group: Shift the focus of on-site visits from reviewing a school district's policies to examining whether the policies are put into practice.
- Parent Group: When child-specific noncompliance is cited, NHDOE/SERESC should randomly sample other files in order to rule out systemic noncompliance.
- Parent Group: Increase NHDOE's involvement in the Focused Monitoring and Program Approval processes; "There is a perceived disconnect between DOE and [Focused Monitoring and Program Approval]."
- Parent Group: Increase the "rigor" of Focused Monitoring and Program Approval.
- Parent Group: increase the "substance" of Focused Monitoring; "de-emphasize procedural compliance."
- Parent Group: Expand the focus of Focused Monitoring and Program Approval visits from access, transition, and discipline to include child find, LRE and service delivery.
- SAC: Increase the involvement of students and parents in Focused Monitoring reviews.
- SAC: Increase the length of Focused Monitoring site visits.
- SAC: Improve the components of Focused Monitoring and Program Approval reviews; especially to include an increased emphasis on LRE.
- SAC: Refocus the reviews and corrective actions on substantive issues, rather than procedural compliance.

C. Focused Monitoring and Program Approval Reports and Corrective Action Plans

- 1. Eliminate Achievement Team (in Focused Monitoring) and accreditation information (Program Approval) from IDEA compliance reporting. If a**

discussion of any set of facts is not related to IDEA compliance, it should not be included with compliance reports.

2. **Improve the clarity with which findings are reported.** Compliance reports for both Focused Monitoring and Program Approval should carefully delineate the following: 1) the specific data that prompted the NHDOE's decision to conduct a compliance review in the district or facility, 2) the specific areas of compliance reviewed, 3) specific results of file review activities (including specific areas of procedural compliance), 4) results of any additional activities used to validate or invalidate relevant file review results (such as interviews, observations, etc.), and 5) the state's determination regarding noncompliance in each area of review – including whether a finding is child-specific or systemic. Problematic practices that do not represent noncompliance can be addressed in the reports, but guidance concerning improvement of these problematic practices should be described as recommendations.
3. **Eliminate the practice of including "suggestions" related to IDEA compliance in Focused Monitoring and Program Approval reports** (such as conducting annual IEP meetings or developing IEP goals to address all areas of need). Review teams and those developing Focused Monitoring and Program Approval reports must be able to clearly distinguish between what is *required* and what is simply *recommended*. In areas in which some information indicates noncompliance and other information indicates compliance, the state must have decision rules in place to enable review teams to make compliance determinations accurately and consistently.
4. **Within each Corrective Action Plan, include an appropriate description of acceptable evidence of correction for each finding.** When corrective actions are developed, include a description of acceptable evidence. For example, for a child-specific finding concerning measurable annual goals, acceptable evidence might be noted as, "A copy of the student's revised IEP containing measurable annual goals and the corresponding Prior Written Notice form will be submitted to the NHDOE by the date specified."
5. **Eliminate use of the "Assurance Form" to address child-specific findings of noncompliance.** To appropriately verify correction, the NHDOE should review the student's updated IEP instead of merely accepting assurances of correction.
6. **Ensure that both prongs of OSEP's Memo 09-02 are satisfied when conducting activities to verify correction of noncompliance.** When conducting verification monitoring activities, the state must ensure that student samples include a representation of students for whom the noncompliance was originally identified *and* a sample of students who were not included in the original monitoring activities.
7. **Formalize the state's tracking and follow-up procedures for districts and facilities that are in Corrective Action Plans, and apply the procedures uniformly across the state.** The state should have a process for consistently

checking in with districts and facilities at particular intervals to monitor CAP implementation. If possible, the state should also review data during the corrective action timeframe to see if data related to the noncompliance demonstrate improvement.

8. **For districts and facilities that are in danger of failing to correct noncompliance in a timely manner, establish a formal process allowing the state to intervene appropriately before the correction timeframe expires. If evidence indicates a problem with correction of any finding, the state must be able to address its concerns in a proactive manner.**

In addition to the evaluators' recommendations, see Display X-3 for additional recommendations made by others.

Display X-3. Subsection C Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- Parent Group: Ensure there is a connection between corrective action plans and reduction of the achievement gap.
- Parent Group: Increase follow-up at the end of the two-year Focused Monitoring cycle in order to ensure sustained compliance and reduction of the achievement gap.
- Parent Group: Increase the amount of general oversight at NHDOE to ensure implementation of corrective action plans.
- Parent Group: Increase fiscal support to implement corrective actions and ensure sustained compliance.
- SAC: Implement changes to ensure sustained compliance. "It's always the same issues and the same corrective actions."

D. Enforcement Actions

1. **Develop a set of decision rules used to determine appropriate enforcement actions based on the four criteria contained in state statute.²⁰⁷** The state and its constituents must be assured that enforcement actions are applied consistently and uniformly across districts and private facilities.
2. **Develop and implement more meaningful enforcement actions for districts placed in the *Needs Substantial Intervention* determinations category and those failing to correct noncompliance within one year.** Requiring that a district develop a "plan" cannot be viewed as an effective enforcement activity for a district placed in *Needs Substantial Intervention*. Likewise, merely offering – rather than requiring – technical assistance to districts and facilities that are unsuccessful in correcting findings is not appropriate. Suitable enforcement actions for districts in the lowest determinations category and

²⁰⁷ Ed 1125.02 (d); see also 186-C:5 (d).

those with outstanding noncompliance should contain state-mandated activities rather than allowing districts additional flexibility and self-direction.

In addition to the evaluators' recommendations, see Display X-4 for additional recommendations made by others.

Display X-4. Subsection D Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- Parent Group: Tie noncompliance to required NHDOE and/or SERESC training. "There is a lack of follow-up and professional development in curriculum, alignment, etc."
- Parent Group: Increase the consequences of uncorrected noncompliance in Focused Monitoring and Program Approval; improve both sanctions and incentives.

E. Annual LEA Determinations

- 1. Use performance and compliance indicators from the State Performance Plan in making annual LEA determinations.** The use of performance indicators would further emphasize the importance of continuously improving student outcomes and serve as further motivation for both compliance and performance—especially when the receipt of a poor determination carries potentially significant sanctions.
- 2. Solicit stakeholder input into the development of a formula by which LEA determinations will be made.** Extending an invitation to stakeholders to solicit input on determinations formula revisions would strengthen relationships between NHDOE and its stakeholders and allow interested parties to collaborate toward a common purpose.

F. Verifying Accuracy of LEA Data and Ensuring Effectiveness

- 1. Develop a system for verifying the accuracy of the indicator data collected from districts.** For example, such a process could involve selecting a random sample of IEPs from a given district and comparing what is on the IEP to what is on the dataset submitted by the district to the state.
- 2. Related to Recommendation 1, a special effort should take place to verify the accuracy of Indicator 5 data.** Given the large fluctuations in Indicator 5A and 5B data over time, selecting a random sample of IEPs and determining if what is reported on the IEP is accurate and what is reported in datasets submitted to the state is accurate.
- 3. Examine the effectiveness of the FM process on the monitored districts.** As mentioned in Section VIII, the 2010-11 SERESC end-of-year report did not

analyze the impact the FM process had on student performance. This should be examined. The impact of the FM process on the achievement gap should also be examined, since this is the primary justification for choosing a district for monitoring. However, the impact of FM on other performance indicators such as 1, 2, 3C, and 5 should also be examined. Further, as mentioned above, compliance hypotheses should guide the state's monitoring efforts. For those compliance hypotheses that are confirmed, student performance data relating to these hypotheses should be examined to determine if improvement has been made. For example, if it is determined that a district is not providing FAPE to students in the regular classroom environment, a comparison of the proficiency rates of students before and after the Corrective Action Plan was implemented could be conducted to determine if student performance improved.

4. **Identify the "high-performing" focused monitored districts and determine why the FM process worked well for them.** For example, for those focused monitoring districts that have shown gains in student proficiency and a decrease in the achievement gap, what is it about the district and/or their experience with the FM process that allowed them to show such improvements in student performance. Then determine how this information can be used with other districts going through the FM process so that they too might experience positive student performance outcomes.

In addition to the evaluators' recommendations, see Display X-5 for additional recommendations made by others.

Display X-5. Subsection F Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- SERESC: There needs to be a core set of indicators to measure effectiveness – "I'm looking at this process and I'm thinking, 'why can't we get something in place by January and start?'"
- SERESC: Take a more longitudinal approach to data analysis. "Provide more time to sustain efforts."
- SERESC: "A more articulate data set is needed. [SERESC] is developing alternative indicators."
- Parent Group: Verify the reliability and validity of suspension/expulsion data used to determine compliance with Indicator 4 and LRE data used to determine compliance with Indicator 5.
- Parent Group: Increase steps taken to ensure the validity and reliability of student level data submitted to NHDOE and stored in NHSEIS.
- SAC: Increase the validity and reliability of data (especially suspension/expulsion) by ensuring universal understanding of compliance standards.

G. Staffing and Resources

- 1. Increase review team members' effectiveness by developing mandatory IDEA pre-visit training.** While shadowing can be an effective follow-up training method for review team members, the state must develop an effective means of training these team members before they assist in any compliance review activities. The lens through which SEA staff and SEA contractors must view compliance-related activities is often different than a typical LEA staff member's lens. Without proper training, compliance reviews can be compromised from the outset.
- 2. Reconsider the practice of contracting out the FM and PA processes in general, and reconsider contracting with SERESC.** With respect to the former, as noted in Section I of this report, one clear disadvantage of contracting out a state special education monitoring system is that directing funds outside an SEA prevents the SEA from developing its own internal capacity, a capacity that is then available for other purposes (such as technical assistance and monitoring Indicator compliance). With respect to the latter, as also noted in Section I of this report, contracting with SERESC creates a potential conflict with the state statute and a potential perception of bias among key stakeholders.
- 3. Review state restrictions on filling vacancies in the Bureau, and pursue state funding in support of additional staff if warranted.**

In addition to the evaluators' recommendations, see Display X-6 for additional recommendations made by others.

Display X-6. Subsection G Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- NHDOE: Reduce the amount of multi-tasking required of SEA personnel.
- SERESC: "I think we've been asked to do some of the work that DOE should be doing...but otherwise it just wouldn't get done."
- SERESC: Hire consultants who are specifically assigned to certain indicator areas. SERESC: "I would like to see us monitor ourselves internally" to ensure that SERESC is doing things effectively.
- SERESC: Better communication among additional aspects of the Department's work (i.e., Standards and Assessment, information regarding the Common Core Standards).
- SERESC: "It's the relationships. It's between the agencies." Communication needs to be improved between the NHDOE and SERESC.
- Parent Group: Given the lack of progress in reducing the achievement gap, evaluate whether the contract with SERESC (\$1,499,904 biennium) constitutes an efficient use of resources.
- Parent Group: Evaluate whether NHDOE's contract with SERESC constitutes a conflict of interest [RSA 186-C:5, III(f)].

- Parent Group: Increase the number of NHDOE staff members dedicated to provide technical assistance.
- Parent Group: Decrease the involvement of volunteers in the FM and PA processes.
- SAC: Consider ending the "SERESC monopoly" the next time NHDOE contracts with an outside agency to conduct compliance reviews.
- SAC: Increase the independence of Focused Monitoring and Program Approval reviews. Teams consist of district personnel, SERESC employees (who tend to be retired school employees), and volunteers (who tend to be active school employees).
- SAC: Increase state funding for the Special Education Bureau by increasing the number of regular state-approved NHDOE positions.
- SAC: Address high rate of employee turnover within the NHDOE: "[The Bureau] has been devastated. [NHDOE employees are] doing the best they can.



NEW HAMPSHIRE
COUNCIL ON DEVELOPMENTAL DISABILITIES

January 21, 2013

Dear Chairwoman Stiles & The Health, Education, & Human Services Committee,

My name is Jennifer Bertrand, I live in Mont Vernon, New Hampshire, I am a certified NH educator and the parent of a petite and spunky daughter named Chloe who experiences a significant developmental disability. Today I am here to speak on behalf of The NH Council on Developmental Disabilities (DDC) and myself to urge you to support SB 27. The DDC is an agency consisting of members appointed by the Governor to represent and advocate for people with developmental disabilities. The Council supports programs and policies to further our mission of dignity, full rights of citizenship, equal opportunities and full participation in all areas of life for all NH citizens with developmental disabilities. Education is an important foundation for that.

The report relevant to SB 27 and submitted to the DOE by Data Driven Enterprises on May 31, 2012 (The findings in the Final Report on the Request for Proposal for: Independent Organization for Program Evaluation & Quality Assurance) clearly identified significant areas of concern and the need for improved accountability. Concerns of this nature warrant progress to be reviewed more frequently. The next reporting should happen much sooner so that it will likely benefit students who are in school currently. We ask that this committee to vote in favor of SB 27.

One issue that is particularly concerning as a certified NH educator and as a parent of a child who experiences a disability that receives special education services is that file reviews are currently nearly the only evaluation technique to determine compliance or whether or not children who have a disability are receiving the services s/he should be receiving. Other activities, such as interviews, observations, and provider time logs, etc. are not being adequately utilized and included during the evaluation process. These activities confirm whether or not children who experience a disability are actually being provided with the services outlined in their IEP (Individualized Educational Plan) and therefore are actually receiving FAPE (Free And Appropriate Public Education) in the LRE (Least Restrictive Environment). SB 27 might not require this, but a more frequent assessment of progress is needed to understand how well we are addressing concerns of this nature.

Accountability works for all of us as it leads to good results. The Council and I urge you to vote in favor of SB 27 and thereby expedite the next report.

Sincerely,


Jennifer Bertrand
Chairperson, DDC Policy Committee

Cc: Sen. John Reagan, Sen. Peggy Gilmour,
Sen. Molly Kelly, Sen. Andy Sanborn



Chloe Bertrand Age 12

January 22, 2013

**SB 27
Testimony**

Senator Nancy Stiles, Chair
Committee on Health, Education and Human Services
Legislative Office Building, Room 103
North State Street
Concord, NH 03301

Dear Senator Stiles and members of the Senate Health, Education and Human Service Committee,

I am writing to ask you to **please support SB 27**, An Act relative to monitoring by the department of education of programs for children with disabilities. As the parent of a young man who benefited from special education, I know the importance of high-quality special education programs in preparing children with disabilities for successful adult lives.

I believe that this bill, which requires the NH Department of Education, "with input from the advisory committee on the education of children/students with disabilities" to "select and contract with an independent, nationally recognized organization in program evaluation and quality assurance to evaluate in 2010, *2015*, and decennially thereafter, the effectiveness of the program approval and monitoring system, including whether it is carrying out activities in RSA 186-C:5 in an efficient manner" will benefit children with disabilities, the NH Department of Education, the general public that funds special education, and the state special education program approval and monitoring system.

The requirement that "recommendations for any improvements" be submitted "to the commissioner, the state board of education, the governor, and the general court within 90 days of completing the program evaluation" will ensure that the entities responsible for providing and overseeing special education in NH have available to them information that can lead to a better understanding of what is working well, as well as of any deficiencies or areas needing improvement. A critical analysis, even when the findings do not include violations of Federal/State requirements, can lead to improvements in practice and efficiency. For example, the report included recommendations to enhance the use of data in the monitoring process with a focus on each child with a disability receiving a free, appropriate public education in the least restrictive environment.

RSA 186-C:5, IX currently requires an independent evaluation of NH's program approval and monitoring system every 10 years, beginning in 2010. The report from that first evaluation confirmed that NH is doing many things well, but it also identified significant areas of concern. The NH Department of Education has already begun making systemic improvements based on the recommendations in that report. I am pleased that the Department met with stakeholders at a collaborative meeting to share information about their activities related to the report, as well as to obtain input from stakeholders to assist the Department in determining further/additional action steps.

The process related to the independent evaluation involved multiple steps: identifying and contracting with a high quality independent evaluator, conducting the evaluation, obtaining the report, reviewing the report within the department and with representatives from stakeholder groups, determining how to respond to the recommendations in the report, and implementing the response actions. Not surprisingly, different stakeholders raised some issues with the process. Some noted that they did not have the opportunity to correct areas in the report that they believed contained errors or that needed further explanation, and a number of stakeholders were disappointed that it has taken so long to find out the Department of Education's plan to respond to the recommendations in the report. I believe that based on what was learned from this initial evaluation process, subsequent evaluations will be even more effective and productive. I would hope that we do not have to wait 10 years to put what we have learned about the independent evaluation into practice; but that another independent evaluation would instead be conducted at the midpoint, in 2015.

Thank you for this opportunity to provide you with my testimony in support of SB 27. Please contact me if I can offer additional information or answer any questions you may have regarding my testimony.

Sincerely,



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Executive Summary

Background

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

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

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

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

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

This report answers these ten questions.

Evaluation Highlights

Positive Points:

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

Areas for Improvement:

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

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

Additional Points Raised

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

Recommendations are offered in Section X.

Section X

Recommendations

Based on the investigation conducted over the past several months and conclusions offered related to the evaluation questions detailed above, the external evaluators offer the following recommendations as means of improving New Hampshire's special education monitoring procedures and practices.

During conversations with NHDOE staff members,²⁰⁶ SERESC Focused Monitoring and Program Approval staff, parent and advocacy groups (including the Disability Rights Center and the state's Parent Information Center), and the State Advisory Committee, the evaluators also solicited recommendations. Relevant recommendations from these parties are also noted separately within each of the subsections below.

A. Use of Data in Focused Monitoring and Program Approval

1. **Expand the use of data to guide the selection of districts for Focused Monitoring reviews.** In addition to achievement gap and size of the district, consider factors such as compliance history (prevalence/gravity of IDEA complaint decisions and due process hearing results) and performance on State Performance Plan indicators (especially 1, 2, 3C, and 5).
2. **Expand the use of data to guide Focused Monitoring and Program Approval methodologies in districts and facilities being visited.** Prior to visiting a district or private school, NHDOE and SERESC staff members should collaborate on a facilitated review and drill-down of all relevant special education data from the district or facility. The purpose of this pre-visit data review would be twofold: 1) to gain a thorough understanding of the district or facility strengths and apparent areas of difficulty, and 2) to develop specific compliance hypotheses (based on areas of poor performance) that will guide the review team's activities. Compliance hypotheses, which should vary according to each district and facility's unique data, should be developed in substantive areas most closely related to improving student outcomes with a particular emphasis on each student's receipt of FAPE in the LRE.
3. **Create purposeful samples of students for each compliance hypothesis.** The state's current practice of randomly selecting student files for review in both Focused Monitoring and Program Approval does not allow the best opportunity for identifying noncompliance. By selecting purposeful samples, the state would begin focusing its review activities on students who have the

²⁰⁶ Four of the eight NHDOE employees who were interviewed as part of the evaluation process offered recommendations, while the others declined to make any recommendations. One of the SEA staff members in the latter group commented, "Any concerns have been addressed. [The Focused Monitoring and Program Approval processes] are good and solid."

greatest likelihood of being affected by a district or facility's noncompliance. Multiple sets of district data, which are already collected by NHDOE, should be cross-referenced and disaggregated by student disability label, race/ethnicity, environment, and other criteria to identify these purposeful samples.

In addition to the evaluators' recommendations, see Display X-1 for additional recommendations made by others.

Display X-1. Subsection A Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- NHDOE: Increase the number of districts reviewed.
- NHDOE: Increase the use of data to guide reviews.
- SERESC: "The system of selection is probably flawed," but it is "in part, DOE-driven." NHDOE and SERESC need to work together to define priorities and work toward those goals.
- SERESC: Increase the sample sizes.
- Parent Group: Increase the number of districts site visits.
- Parent Group: Re-visit selection of the achievement gap as the State's Key Performance Indicator.
- SAC: Increase the number of FM reviews each year.
- SAC: Increase the amount of baseline data used in FM reviews.
- SAC: "Some districts go unmonitored, except for indicators, for years and years." Change that practice to include expanded, direct, and more frequent monitoring of districts not selected for Focused Monitoring on-site reviews.

B. Focused Monitoring and Program Approval Instruments and Methodology

- 1. Ensure proper training in IDEA and state special education requirements prior to any individual's participation in Focused Monitoring or Program Approval.** Due to the various backgrounds of individuals currently participating in the Focused Monitoring and Program Approval processes, the state cannot be assured that each one is adequately prepared to properly conduct file review activities and other on-site activities. Evaluators observed confusion over certain requirements among review teams: proper training would help eliminate this confusion and ensure a greater likelihood of accurate, appropriate monitoring results.
- 2. Eliminate "one-size-fits-all" compliance review documents.** As discussed in Subsection A, compliance hypotheses should guide the state's review activities for both Focused Monitoring and Program Approval. In keeping with this recommendation, the instruments used to for file reviews should be specific to the compliance hypotheses developed for each district and facility.

3. **Ensure that Focused Monitoring and Program Approval compliance review instruments accurately reflect federal and state requirements.** The general instruments currently in use contain some approximations of federal requirements, and some items do not reflect federal or state requirements. The former should be corrected, and the latter should be eliminated.
4. **Separate Focused Monitoring and Program Approval from other school improvement and/or accreditation activities.** In Focused Monitoring, activities that do not relate to the identification of noncompliance should not be included (i.e., Achievement Team data reviews, improvement planning, etc.). While these activities have positive aspects, the appropriate time for improvement planning within an IDEA Focused Monitoring context is *after* the state has alerted the district or facility to one or more findings of noncompliance. In Program Approval, the state's identification of noncompliance should be separated from private school accreditation activities.
5. **Increase the sample size for file reviews and case studies.** In order to ascertain a district or facility's compliance with IDEA requirements, one or two files per school is not adequate when many districts serve hundreds of students with disabilities. While it is rarely feasible to review every student's file, it is unlikely that systemic noncompliance can truly be identified using the limited samples of the current Focused Monitoring and Program Approval processes.
6. **Increase the amount of time allotted for compliance review activities.** By eliminating non-IDEA compliance components of the current Focused Monitoring and Program Approval processes, review teams would have additional time for appropriate reviews of student files, purposeful interviews with school staff, observations, and other focused activities to facilitate the identification of noncompliance. Even so, appropriate monitoring activities are likely to require more than the current one or two days in all but the smallest districts and private facilities.
7. **Employ additional strategies in the identification of noncompliance.** Rather than accepting verbal assurances and statements from district and facility staff during compliance reviews, the state should develop and implement a means of collecting information from school staff through a formal interview process. The interviews should not be the same for each staff member; in order to properly support a finding of noncompliance, they should be guided by file review results for individual students in each of the compliance hypotheses.
8. **Increase the involvement of NHDOE in the Focused Monitoring and Program Approval compliance reviews.** As observed by the evaluators, review teams are not always in agreement over how to interpret certain IDEA requirements or how to determine whether a certain set of facts connote noncompliance in a particular student's case. More NHDOE involvement would allow the SEA to guide compliance review activities and be correctly viewed as the final arbiter of compliance/noncompliance in the monitoring.

context. This would also eliminate the practice of making findings of noncompliance based on the consensus of the review team.

In addition to the evaluators' recommendations, see Display X-2 for additional recommendations made by others.

Display X-2. Subsection B Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- SERESC: Focused Monitoring and Program Approval visits need to be more closely aligned. Teams also need to increase the intensity of the file reviews conducted at private schools.
- SERESC: Provide more technical assistance leading up to each Program Approval visit.
- SERESC: Review more districts using the Focused Monitoring process.
- SERESC: Include structured interviews in the Focused Monitoring and Program Approval processes.
- Parent Group: Shift the focus away from procedural compliance to more substantive issues.
- Parent Group: Increase the examination of standards related to improving educational results and functional outcomes.
- Parent Group: Shift the focus of on-site visits from reviewing a school district's policies to examining whether the policies are put into practice.
- Parent Group: When child-specific noncompliance is cited, NHDOE/SERESC should randomly sample other files in order to rule out systemic noncompliance.
- Parent Group: Increase NHDOE's involvement in the Focused Monitoring and Program Approval processes; "There is a perceived disconnect between DOE and [Focused Monitoring and Program Approval]."
- Parent Group: Increase the "rigor" of Focused Monitoring and Program Approval.
- Parent Group: increase the "substance" of Focused Monitoring; "de-emphasize procedural compliance."
- Parent Group: Expand the focus of Focused Monitoring and Program Approval visits from access, transition, and discipline to include child find, LRE and service delivery.
- SAC: Increase the involvement of students and parents in Focused Monitoring reviews.
- SAC: Increase the length of Focused Monitoring site visits.
- SAC: Improve the components of Focused Monitoring and Program Approval reviews; especially to include an increased emphasis on LRE.
- SAC: Refocus the reviews and corrective actions on substantive issues, rather than procedural compliance.

C. Focused Monitoring and Program Approval Reports and Corrective Action Plans

1. **Eliminate Achievement Team (in Focused Monitoring) and accreditation information (Program Approval) from IDEA compliance reporting.** If a

discussion of any set of facts is not related to IDEA compliance, it should not be included with compliance reports.

2. **Improve the clarity with which findings are reported.** Compliance reports for both Focused Monitoring and Program Approval should carefully delineate the following: 1) the specific data that prompted the NHDOE's decision to conduct a compliance review in the district or facility, 2) the specific areas of compliance reviewed, 3) specific results of file review activities (including specific areas of procedural compliance), 4) results of any additional activities used to validate or invalidate relevant file review results (such as interviews, observations, etc.), and 5) the state's determination regarding noncompliance in each area of review – including whether a finding is child-specific or systemic. Problematic practices that do not represent noncompliance can be addressed in the reports, but guidance concerning improvement of these problematic practices should be described as recommendations.
3. **Eliminate the practice of including "suggestions" related to IDEA compliance in Focused Monitoring and Program Approval reports** (such as conducting annual IEP meetings or developing IEP goals to address all areas of need). Review teams and those developing Focused Monitoring and Program Approval reports must be able to clearly distinguish between what is *required* and what is simply *recommended*. In areas in which some information indicates noncompliance and other information indicates compliance, the state must have decision rules in place to enable review teams to make compliance determinations accurately and consistently.
4. **Within each Corrective Action Plan, include an appropriate description of acceptable evidence of correction for each finding.** When corrective actions are developed, include a description of acceptable evidence. For example, for a child-specific finding concerning measurable annual goals, acceptable evidence might be noted as, "A copy of the student's revised IEP containing measurable annual goals and the corresponding Prior Written Notice form will be submitted to the NHDOE by the date specified."
5. **Eliminate use of the "Assurance Form" to address child-specific findings of noncompliance.** To appropriately verify correction, the NHDOE should review the student's updated IEP instead of merely accepting assurances of correction.
6. **Ensure that both prongs of OSEP's Memo 09-02 are satisfied when conducting activities to verify correction of noncompliance.** When conducting verification monitoring activities, the state must ensure that student samples include a representation of students for whom the noncompliance was originally identified *and* a sample of students who were not included in the original monitoring activities.
7. **Formalize the state's tracking and follow-up procedures for districts and facilities that are in Corrective Action Plans, and apply the procedures uniformly across the state.** The state should have a process for consistently

checking in with districts and facilities at particular intervals to monitor CAP implementation. If possible, the state should also review data during the corrective action timeframe to see if data related to the noncompliance demonstrate improvement.

8. **For districts and facilities that are in danger of failing to correct noncompliance in a timely manner, establish a formal process allowing the state to intervene appropriately before the correction timeframe expires.** If evidence indicates a problem with correction of any finding, the state must be able to address its concerns in a proactive manner.

In addition to the evaluators' recommendations, see Display X-3 for additional recommendations made by others.

Display X-3. Subsection C Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- Parent Group: Ensure there is a connection between corrective action plans and reduction of the achievement gap.
- Parent Group: Increase follow-up at the end of the two-year Focused Monitoring cycle in order to ensure sustained compliance and reduction of the achievement gap.
- Parent Group: Increase the amount of general oversight at NHDOE to ensure implementation of corrective action plans.
- Parent Group: Increase fiscal support to implement corrective actions and ensure sustained compliance.
- SAC: Implement changes to ensure sustained compliance. "It's always the same issues and the same corrective actions."

D. Enforcement Actions

1. **Develop a set of decision rules used to determine appropriate enforcement actions based on the four criteria contained in state statute.**²⁰⁷ The state and its constituents must be assured that enforcement actions are applied consistently and uniformly across districts and private facilities.
2. **Develop and implement more meaningful enforcement actions for districts placed in the *Needs Substantial Intervention* determinations category and those failing to correct noncompliance within one year.** Requiring that a district develop a "plan" cannot be viewed as an effective enforcement activity for a district placed in *Needs Substantial Intervention*. Likewise, merely offering—rather than requiring—technical assistance to districts and facilities that are unsuccessful in correcting findings is not appropriate. Suitable enforcement actions for districts in the lowest determinations category and

²⁰⁷ Ed 1125.02 (d); see also 186-C:5 (d).

those with outstanding noncompliance should contain state-mandated activities rather than allowing districts additional flexibility and self-direction.

In addition to the evaluators' recommendations, see Display X-4 for additional recommendations made by others.

Display X-4. Subsection D Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- Parent Group: Tie noncompliance to required NHDOE and/or SERESC training. "There is a lack of follow-up and professional development in curriculum, alignment, etc."
- Parent Group: Increase the consequences of uncorrected noncompliance in Focused Monitoring and Program Approval; improve both sanctions and incentives.

E. Annual LEA Determinations

1. **Use performance and compliance indicators from the State Performance Plan in making annual LEA determinations.** The use of performance indicators would further emphasize the importance of continuously improving student outcomes and serve as further motivation for both compliance and performance – especially when the receipt of a poor determination carries potentially significant sanctions.
2. **Solicit stakeholder input into the development of a formula by which LEA determinations will be made.** Extending an invitation to stakeholders to solicit input on determinations formula revisions would strengthen relationships between NHDOE and its stakeholders and allow interested parties to collaborate toward a common purpose.

F. Verifying Accuracy of LEA Data and Ensuring Effectiveness

1. **Develop a system for verifying the accuracy of the indicator data collected from districts.** For example, such a process could involve selecting a random sample of IEPs from a given district and comparing what is on the IEP to what is on the dataset submitted by the district to the state.
2. **Related to Recommendation 1, a special effort should take place to verify the accuracy of Indicator 5 data.** Given the large fluctuations in Indicator 5A and 5B data over time, selecting a random sample of IEPs and determining if what is reported on the IEP is accurate and what is reported in datasets submitted to the state is accurate.
3. **Examine the effectiveness of the FM process on the monitored districts.** As mentioned in Section VIII, the 2010-11 SERESC end-of-year report did not

analyze the impact the FM process had on student performance. This should be examined. The impact of the FM process on the achievement gap should also be examined, since this is the primary justification for choosing a district for monitoring. However, the impact of FM on other performance indicators such as 1, 2, 3C, and 5 should also be examined. Further, as mentioned above, compliance hypotheses should guide the state's monitoring efforts. For those compliance hypotheses that are confirmed, student performance data relating to these hypotheses should be examined to determine if improvement has been made. For example, if it is determined that a district is not providing FAPE to students in the regular classroom environment, a comparison of the proficiency rates of students before and after the Corrective Action Plan was implemented could be conducted to determine if student performance improved.

4. **Identify the "high-performing" focused monitored districts and determine why the FM process worked well for them.** For example, for those focused monitoring districts that have shown gains in student proficiency and a decrease in the achievement gap, what is it about the district and/or their experience with the FM process that allowed them to show such improvements in student performance. Then determine how this information can be used with other districts going through the FM process so that they too might experience positive student performance outcomes.

In addition to the evaluators' recommendations, see Display X-5 for additional recommendations made by others.

Display X-5. Subsection F Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- SERESC: There needs to be a core set of indicators to measure effectiveness—"I'm looking at this process and I'm thinking, 'why can't we get something in place by January and start?'"
- SERESC: Take a more longitudinal approach to data analysis. "Provide more time to sustain efforts."
- SERESC: "A more articulate data set is needed. [SERESC] is developing alternative indicators."
- Parent Group: Verify the reliability and validity of suspension/expulsion data used to determine compliance with Indicator 4 and LRE data used to determine compliance with Indicator 5.
- Parent Group: Increase steps taken to ensure the validity and reliability of student level data submitted to NHDOE and stored in NHSEIS.
- SAC: Increase the validity and reliability of data (especially suspension/expulsion) by ensuring universal understanding of compliance standards.

G. Staffing and Resources

1. **Increase review team members' effectiveness by developing mandatory IDEA pre-visit training.** While shadowing can be an effective follow-up training method for review team members, the state must develop an effective means of training these team members before they assist in any compliance review activities. The lens through which SEA staff and SEA contractors must view compliance-related activities is often different than a typical LEA staff member's lens. Without proper training, compliance reviews can be compromised from the outset.
2. **Reconsider the practice of contracting out the FM and PA processes in general, and reconsider contracting with SERESC.** With respect to the former, as noted in Section I of this report, one clear disadvantage of contracting out a state special education monitoring system is that directing funds outside an SEA prevents the SEA from developing its own internal capacity, a capacity that is then available for other purposes (such as technical assistance and monitoring Indicator compliance). With respect to the latter, as also noted in Section I of this report, contracting with SERESC creates a potential conflict with the state statute and a potential perception of bias among key stakeholders.
3. **Review state restrictions on filling vacancies in the Bureau, and pursue state funding in support of additional staff if warranted.**

In addition to the evaluators' recommendations, see Display X-6 for additional recommendations made by others.

Display X-6. Subsection G Recommendations Made by Others

The comments and recommendations below reflect the opinions of NHDOE, SERESC, DRC, PIC, and SAC members concerning ways to improve the state's monitoring procedures and practices.

- NHDOE: Reduce the amount of multi-tasking required of SEA personnel.
- SERESC: "I think we've been asked to do some of the work that DOE should be doing...but otherwise it just wouldn't get done."
- SERESC: Hire consultants who are specifically assigned to certain indicator areas. SERESC: "I would like to see us monitor ourselves internally" to ensure that SERESC is doing things effectively.
- SERESC: Better communication among additional aspects of the Department's work (i.e., Standards and Assessment, information regarding the Common Core Standards).
- SERESC: "It's the relationships. It's between the agencies." Communication needs to be improved between the NHDOE and SERESC.
- Parent Group: Given the lack of progress in reducing the achievement gap, evaluate whether the contract with SERESC (\$1,499,904 biennium) constitutes an efficient use of resources.
- Parent Group: Evaluate whether NHDOE's contract with SERESC constitutes a conflict of interest [RSA 186-C:5, III(f)].

- Parent Group: Increase the number of NHDOE staff members dedicated to provide technical assistance.
- Parent Group: Decrease the involvement of volunteers in the FM and PA processes.
- SAC: Consider ending the "SERESC monopoly" the next time NHDOE contracts with an outside agency to conduct compliance reviews.
- SAC: Increase the independence of Focused Monitoring and Program Approval reviews. Teams consist of district personnel, SERESC employees (who tend to be retired school employees), and volunteers (who tend to be active school employees).
- SAC: Increase state funding for the Special Education Bureau by increasing the number of regular state-approved NHDOE positions.
- SAC: Address high rate of employee turnover within the NHDOE: "[The Bureau] has been devastated. [NHDOE employees are] doing the best they can.

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Executive Summary
New Hampshire Department of Education,
Bureau of Special Education

The New Hampshire Department of Education (NHDOE), Bureau of Special Education (Bureau) is in receipt of the *Final Report on the Request for Proposal for: Independent Organization for Program Evaluation and Quality Assurance*, dated May 31, 2012. The Bureau would like to take this opportunity to thank *Data Driven Enterprises (DDE)* for the work that their organization conducted in support of an independent evaluation of the Bureau's effectiveness of the program approval and monitoring systems, to ensure activities in RSA 186-C:5 are carried out in an efficient manner. Furthermore, the Bureau would like to thank you for the positive and critical feedback included in your report and for the numerous recommendations made by your organization as a result of your evaluation to ideally improve NH's monitoring of special education provided by local school districts to improve the outcomes for NH students with disabilities ensuring that they are receiving a *Free and Appropriate Public Education (FAPE)* in accordance with the *Individuals with Disabilities Act (IDEA)*.

Specifically, DDE was researching the effectiveness of the Bureau's various monitoring processes with regard to: (1) identifying compliance and noncompliance; (2) clearly notifying districts of noncompliance and the implications of noncompliance, such as clearly outlining the enforcement steps to be taken by the NHDOE to support a school district is correcting noncompliance; (3) making annual determinations of school districts' responsible for implementing special education and the regulations of IDEA; (4) evidence that shows that the Focused Monitoring and Program Approval processes are having a positive effect on student results and student outcomes and enhanced compliance by local school districts, and; (5) the staffing capacity and resources of the Bureau to successfully implement monitoring processes that ensure NH children with disabilities are receiving a FAPE in accordance with IDEA and that the outcomes for students with disabilities in NH are improving over time.

Through DDE's evaluation they found numerous evaluation highlights worthy of mention. Of those highlights, the most notable are: the use of performance data by the Bureau in selecting districts for the Focused Monitoring process; the monitoring processes related to certain State Performance Plan indicators are reliable and have improved markedly over time; the state has improved since 2004-2005 at ensuring the correction of identified noncompliance within one year, and; the analysis of 2007-2008 through 2010-2011 proficiency data suggests that the Focused Monitoring system is fulfilling the first purpose of increasing achievement of students with disabilities.

While the Bureau has and continues to be monitored by the U.S. Department of Education, Office of Special Education Programs (OSEP) and has been found to be in compliance with the regulations of IDEA, the Bureau continues to seek out ways to enhance our work in supporting the outcomes for NH students with disabilities. The monitoring practices utilized by the Bureau are practices not created by the Bureau, but mandated by the federal Department of Education and there are numerous recommendations by DDE that the Bureau cannot accommodate if the Bureau wants to continue successfully accepting the allocated IDEA funds that are designated to NH. Currently, the only funding received by the Bureau to support staffing costs, initiative costs, and the costs of supporting local school districts in their support of students with disabilities comes solely from the federal Department of Education. The only funding provided to the Bureau by the state of New Hampshire is in accordance with RSA 186-C:18 (IV) and is determined bi-annually during the development of the state budget. This amount is currently \$100,000 for the FY'12 fiscal year. The Bureau must adhere to the requirements of the federal government to maintain the federal funding to support NH students with disabilities. The Bureau is acutely aware of its federal mandates that the state must adhere to as well as the state process involved when the state exceeds the federal requirements and regulations of IDEA. With that said, the Bureau will be exploring the feasibility of implementing the following recommendations made by DDE:

- (1) Expanding the use of data to inform the selection of districts for the Focused Monitoring process and expand the use of data in guiding the implementation of the Focused Monitoring and Program Approval Processes. The Bureau will be exploring ways in which the expansion of data can enhance these processes.
- (2) Ensuring the proper pre-training in IDEA of the individuals the Bureau contracts with to conduct the Focused Monitoring and Program Approval processes prior to the beginning of these processes with local school districts and private special education programs. The Bureau will be exploring the implementation of IDEA trainings for contracted vendors prior to the inception of their work.
- (3) Reviewing and revising compliance review instruments utilized in the Focused Monitoring and Program Approval processes to ensure their accurateness with the regulations of IDEA and state requirements. The Bureau will be reviewing these documents and instruments moving forward to ensure their effectiveness and precision.
- (4) Increase the number of files reviewed through the Focused Monitoring and Program Approval processes as well increasing the time allotted for the review of each file. The Bureau will be exploring various ways to feasibly implement this moving forward.
- (5) Increasing the involvement of Bureau personnel in the Focused Monitoring and Program Approval processes. The Bureau will be exploring how to provide for this in light of the current staffing restraints of the Bureau in conjunction with the current work load of each Bureau staff member. The Bureau staff's current work load requirements in implementing the monitoring and reporting mandated by IDEA and mandated to continue to successfully be awarded IDEA funding by the federal government are not requirements that cannot be set aside or overlooked, rather must be done in addition to any further work load requirements. The Bureau will explore the feasibility of increasing the number of Bureau staff through the state budgetary process to accommodate such a recommendation.

- (6) Formalizing the Bureau's tracking and follow-up procedures for districts who are in corrective action or who are in danger of failing to correct noncompliance in a timely manner to establish a formal process allowing the Bureau to intervene appropriately before the correction timeframe expires. The Bureau recognized this need several months prior to this report and has been actively working on this.
- (7) Reconsidering the practice of contracting out the Focused Monitoring and Program Approval processes and in particular, contracting with South Eastern Regional Education Service Center (SERESC). The Bureau does not currently have the staffing capacity to bring these processes "back in house" or the state positions available to support hiring additional staff to do the work of the contracted vendor. Currently, the Bureau does not have state approval to increase the number of staff positions currently allocated to the Bureau. However, the Bureau will continue to work through the budgetary process in hopes of creating state funded positions within the Bureau, as there currently exists no positions within the Bureau funded by the state.

In conclusion, the Bureau finds many of DDE's recommendations worth exploring and is grateful for the objective outside findings that there are areas of the Bureau's monitoring processes that can be enhanced. The Bureau has long felt that the lack of state funding to support our work in supporting local school districts has had a negative impact. With that said, the Bureau believes that the federal funding provided has allowed us to implement monitoring processes as successful as possible in light of the lack of state support. The Bureau staff are hard-working, mutli-skilled, and dedicated to supporting students with disabilities and we feel that your report captures this. If the Bureau can secure state funding to increase the number of staff, many of the above recommendations can be adequately implemented to further enhance the outcomes for NH students with disabilities moving forward.

Submitted by:
Santina Thibedeau, State Director of Education
NH Department of Education, Bureau of Special Education

1 Special Education; Program Monitoring. Amend RSA 186-C:5, IX to read as follows:

IX. The department, with input from the advisory committee on the education of children/students with disabilities, shall select and contract with an independent, nationally recognized organization in program evaluation and quality assurance to evaluate in 2010, **2015**, and decennially thereafter, the effectiveness of the program approval and monitoring system, including whether it is carrying out activities in RSA 186-C:5 in an efficient manner. Such organization shall submit recommendations for any improvements to the commissioner, the state board of education, the governor, and the general court within 90 days of completing the program evaluation. **On or before September 1, 2013, the department shall submit a detailed plan for addressing the findings and recommendations of the first evaluation conducted under this section. The plan shall contain timelines for completion or each element of the plan. On or before December 1, 2013 and May 1, 2014, the department shall submit reports on its progress toward completing its plan. The plan and reports shall be submitted to the governor, to the chairs of the senate and house committees with jurisdiction over education and to the state board of education. The department shall engage the same organization that conducted the 2012 evaluation for the 2015 evaluation, which shall be focused on determining whether the department has addressed the findings and recommendations of the 2012 evaluation. The department shall provide unimpeded access to all documents requested by the organization.**

2 Effective Date. This act shall take effect 60 days after its passage.



DISABILITIES RIGHTS CENTER, Inc.

18 Low Avenue, Concord, NH 03301-4971 • advocacy@drcnh.org • www.drcnh.org
(603) 228-0432 • (800) 834-1721 voice or TTY • FAX: (603) 225-2077

March 4, 2013

Senate Health, Education & Human Services Committee
LOB, Room 103
Concord, NH 03301

Dear Members of the Committee:

As you prepare to act on Senate Bill 27, which would move up the next evaluation of the Department of Education's special education monitoring process to 2015, you should be aware of recent information that has been published by the Department about the continued poor achievement of the state's children with disabilities.

On February 15, the Department released its latest Annual Performance Report to the federal government. The report is based on the 2011-2012 school year, and shows that *only 38% of children with disabilities met proficiency standards in reading, which is 33 points below the state's target of 71%. In mathematics, students with disabilities did significantly worse, with only 28% meeting standards, which is well less than half the state target of 70%*¹. Both results represent a decline in achievement over the last couple of years from levels which themselves were well below target levels².

A helpful comparison figure is the achievement levels of students without disabilities in the state. In the 2011-2012 year, 85% of that group reached proficiency in reading, and 74% in mathematics. It should be noted that about 75%-80% of student with disabilities do not have intellectual disabilities and should be expected to perform at rates equivalent to their non-disabled peers if being provided an appropriate education. For those with intellectual disabilities, many take an alternative assessment, so as not to unduly deflate school-wide or statewide results.

This information further confirms one of the major findings of the May 2012 Independent Evaluation Report: the Department's monitoring is having little or no impact in the area of actual student achievement. It also is a continued demonstration of the importance of improvement of the Department's oversight activities, which SB 27's accelerated re-assessment will support.

Thank you for considering the views of the Disabilities Rights Center.

Sincerely,

Michael Skibbie
Policy Director

¹ See New Hampshire Part B State Annual Performance Report for FFY 2011, p. 17;
http://www.education.nh.gov/instruction/special_ed/documents/apr_february_15_2013_final.pdf.

² Another helpful comparison figure is the achievement levels of students without disabilities in the state. In the same school year, 85% of that group reached proficiency in reading, and 74% in mathematics.

**NEW HAMPSHIRE COUNCIL
ON DEVELOPMENTAL
DISABILITIES**



Our Mission –

**The Council is dedicated to -
*“Dignity, full rights of citizenship,
equal opportunity, and full
participation for all NH citizens
with developmental disabilities.”***



WHAT WE BELIEVE

The Council believes that citizens of *all* abilities are fully able to participate and contribute meaningfully to our society when given the right support services, opportunities to grow, and an accepting community.



THE WORK OF THE COUNCIL

To achieve its mission, the Council continually assesses how NH citizens with developmental disabilities are doing. Based on this, the Council develops and implements a Five-Year Plan to better provide the support services and opportunities they need to succeed. In all its work, the Council builds coalitions to make needed improvements and strives to give citizens with developmental disabilities a strong voice and role in crafting policies that affect them. In its work, the Council also focuses attention on increasing the effectiveness and availability of the specific support services that people with disabilities need to strengthen their abilities and bring out their gifts.

COUNCIL MEMBERSHIP

The Council consists of 21 members appointed by the Governor. At least 60% of members are persons with disabilities or their families. Membership also includes representatives from all major state agencies that provide support to citizens with disabilities. Members are appointed for three-year terms and serve a maximum of two terms. The Council sets the direction and policies for the Five-Year Plan and all other Council activities.

COUNCIL PROJECTS

The Council supports many projects to carry out its mission, including:

- Stepping Stones NH Magazine and Guidebook and NH RAP Sheet Quarterly Newsletter.
- Direct Support Professionals (DSP) Conference, DSP Appreciation and Family Caregiver Support.
- Emergency Response and Preparedness.
- Leadership development and self-advocacy training for people with disabilities and families.
- Small grants for community, projects and teens.
- Legislative Advocacy and Policy Development.
- Improving service quality in the Developmental Disabilities System.

ADDRESSING THE ISSUES

The Council has a basic responsibility for developing plans and strategies to tear down the barriers that hold people back.



Key barriers in NH today include a shortage of skilled direct support staff, budget cuts and the maze of different regulations and programs that often make it difficult for people to get the coordinated support they need.

COUNCIL INDEPENDENCE

The Council is an independent agency of state government. It has the autonomy and authority needed to carry out its mission. This includes developing plans, bringing groups together, conducting projects, and speaking out. The Council receives 100% of its funding through a federal block grant.

ACHIEVEMENTS

Since 1971, the Council has worked with considerable success to improve the lives of people with disabilities.

The Council played a key role in closing of the Laconia State School, which for almost 100 years had deprived citizens with disabilities of their basic human right to live freely in the community, get a job, make their own choices, and lead full and normal lives. The Council did this by developing a master plan called "Action for Independence." This plan provided a blueprint for closing Laconia, freeing all its residents, and providing them with a home and the community supports they needed to live as full citizens in the community. The federal court used this plan for its order to close Laconia -- and in 1991, NH became the first state to free all its citizens with disabilities and bring them home.

More recently, the Council played a key role in passing the Medicaid for Employed Adults with Disabilities Program. This program allows workers with disabilities who get good jobs to keep the Medicaid supports they need to keep their jobs by paying premiums. Before this law was passed, people with disabilities would automatically lose their supports once they got a good job.

CONTACT US



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Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: 03.06.13

THE COMMITTEE ON Health, Education and Human Services
to which was referred Senate Bill 27

AN ACT relative to monitoring by the department of education of
 programs for children with disabilities.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0736s

Senator Nancy Stiles
For the Committee

Michael Ciccio 271-3093

New Hampshire General Court - Bill Status System

Docket of SB27

Docket Abbreviations

Bill Title: (New Title) relative to monitoring by the department of education of programs for children with disabilities and relative to the calculation of school building aid grants.

Official Docket of SB27:

Date	Body	Description
1/3/2013	S	Introduced and Referred to Health, Education & Human Services; SJ 4
1/17/2013	S	Hearing: 1/22/13, Room 103, LOB, 10:30 a.m.; SC5
3/6/2013	S	Committee Report: Ought to Pass with Amendment #2013-0736s, 3/14/13; SC11
3/14/2013	S	Committee Amendment 0736s, AA, VV;
3/14/2013	S	Ought to Pass with Amendment 0736s, MA, VV; Refer to Finance Rule 4-5;
3/21/2013	S	Committee Report: Ought to Pass, 3/28/13; SC13
3/28/2013	S	Ought to Pass: MA, VV; OT3rdg;
4/3/2013	H	Introduced and Referred to Education; HJ35 , PG.1191
4/17/2013	H	Public Hearing: 4/23/2013 11:00 AM LOB 207
5/7/2013	H	Subcommittee Work Session: 5/9/2013 11:00 AM LOB 207
5/9/2013	H	Subcommittee Work Session: 5/15/2013 11:00 AM LOB 207
5/9/2013	H	Executive Session: 5/21/2013 10:00 AM LOB 207
5/21/2013	H	Committee Report: Ought to Pass for June 5 (Vote 15-4; RC); HC42 , PG.1432
6/5/2013	H	Floor Amendment #2013-1990h(NT) (Rep Shurtleff): AA VV; HJ49 , PG.1595-1596
6/5/2013	H	Ought to Pass with Amendment #1990h(NT): MA VV; HJ49 , PG.1595-1596
6/12/2013	S	Sen. Stiles Moved Concur with House Amendment #1990h, NT, MA, VV
6/26/2013	H	Enrolled
6/26/2013	S	Enrolled
7/15/2013	S	Signed by the Governor on 07/15/13; Chapter 0226
7/15/2013	S	I. Section 2 & 3 effective as provided in Section 4
7/15/2013	S	II. Remainder Effective 09/13/13

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB 27 ✓

ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 04100s - AMENDMENT # 0736s
- AMENDMENT # 0250s _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

- AS INTRODUCED AS AMENDED BY THE HOUSE
- FINAL VERSION AS AMENDED BY THE SENATE

____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): _____

DATE DELIVERED TO SENATE CLERK

7/23/13
[Signature]

Michael Linds

BY COMMITTEE AIDE