

Enclosure
OSEP’s Response to the Virginia Department of Education’s Differentiated Monitoring System Document Submission

COMPLIANCE

GENERAL SUPERVISION

FINDING: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all educational programs for children with disabilities administered within the State, to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA, as required by 20 U.S.C. §§ 1412(a)(11) and 1416(a), 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (b), 20 U.S.C. § 1232d(b)(3)(A) and (E), 34 C.F.R. § 300.600(e) and 2 C.F.R. § 200.332¹.

| REQUIRED ACTIONS | STATE DOCUMENTS SUBMITTED | OSEP ANALYSIS | REQUIRED ACTIONS/ NEXT STEPS |
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| <p>Within 90 days of the date of this letter, consistent with the State’s general supervisory and monitoring responsibilities described above, VDOE must provide a written plan to OSEP that describes how it will ensure that all of its LEAs meet the requirements of Part B of IDEA. The State’s plan must include a description of the steps VDOE will take to ensure that:</p> | | | |
| <p>1. The State establishes and will implement general supervision and monitoring procedures and practices that are reasonably designed to ensure that LEAs meet IDEA’s program requirements. The State’s procedures and practices must ensure that the State’s systems for review of LEA compliance data and other information are sufficiently comprehensive to identify noncompliance in a timely manner and ensure timely correction of any identified noncompliance consistent with the requirements in 20 U.S.C. § 1232d(b)(3)(A) and (E) and 34 C.F.R. § 300.600(e) and OSEP Memorandum 09-02 (OSEP Memo 09-02), dated, October 15, 2008</p> | <p><u>September 18, 2020:</u></p> <ul style="list-style-type: none"> Notification of and a copy of the updated monitoring procedures: <i>Office of Special Education Program Improvement Compliance and Results-Driven Accountability Process and Procedural Manual.</i> Revised changes in General Supervision monitoring (<i>Virginia’s System of General Supervision of IDEA: Complying with State and Federal Requirements</i>). | <p>Based on the documentation and information provided by the State, OSEP cannot determine whether the State has a monitoring system that is reasonably designed to determine timely LEA compliance with IDEA Part B requirements.</p> <p>The State had to submit a plan describing the steps it would take to ensure that the State established and implements general supervision and monitoring procedures and practices reasonably designed to ensure that LEAs meet IDEA’s program requirements and ensure that LEA compliance data are sufficiently comprehensive to identify and correct noncompliance in a timely manner.</p> <p>During a January 15, 2021, conference call the State informed OSEP that its general supervision and monitoring practices had been undergoing revisions and improvement over the last year.</p> | <p>On or before March 10, 2022, the State must submit to OSEP procedures that demonstrate the State has a system reasonably designed to ensure timely LEA compliance with IDEA requirements. The State must update their policies, procedures, and practices, and if still applicable, needs to address the following or similar factors that go to reasonableness of the nature and scope of the State’s review:</p> <p>For compliance monitoring: Q1. Regarding the “comprehensive in-depth review” of certain LEAs, how many LEAs will receive a “comprehensive in-depth review” annually? Q2. How is a comprehensive in-depth review conducted? Q3. Which records are reviewed during</p> |

¹ This citation was modified to reflect changes in the Uniform Guidance ([2 CFR § 200](#)) dated November 12, 2020.

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| | <p><u>March 4, 2021</u></p> <ul style="list-style-type: none"> • Copy of the supporting documents utilized to carry out the cyclical review of school districts’ implementation of the IDEA in accordance with the provisions at 34 CFR 300.604(a)(1), and (a)(3), (b)(2)(i) and (b)(2)(v), and (c)(2) and the <i>Regulations Governing Special Education Programs for Children with Disabilities in Virginia</i>, 8 VAC 20-80. • Core Special Education Assessment – Narrative • Core Special Education Assessment - Student Record Review | <p>During the call OSEP asked several questions related to the reasonableness of the State’s monitoring system, such as:</p> <p>Q1: Regarding the “comprehensive in-depth review” of certain LEAs, how many LEAs will receive a “comprehensive in-depth review” annually?</p> <p>Q2. How is a comprehensive in-depth review conducted?</p> <p>Q3. Which records are reviewed during “comprehensive in-depth reviews”?</p> <p>Q4. How many LEAs will receive a “targeted or focused” review annually?</p> <p>Q5. What criteria are used to determine when a targeted or focused review takes place?</p> <p>Some of the documentation submitted by the State subsequently included policies and procedures that were in effect prior to OSEP’s finding of noncompliance and had not yet been revised (<i>Virginia’s System of General Supervision of IDEA, 2019</i>). Additionally, information contained in the State’s updated <i>Office of Special Education Program Improvement Compliance and Results-Driven Accountability Process and Procedural Manual</i>, did not contain sufficient detail to enable OSEP to determine reasonableness, including the questions raised by OSEP during the January conference call.</p> | <p>“comprehensive in-depth reviews”?</p> <p>Q4. How many LEAs will receive a “targeted or focused” review annually?</p> <p>Q5. What criteria are used to determine when a targeted or focused review takes place?</p> |
| <p>2. Specifically, the State must revise its general supervision and monitoring system to include procedures and practices that are reasonably designed, as appropriate, to consider and address</p> | <p><u>September 18, 2020:</u></p> <ul style="list-style-type: none"> • Notification of and a copy of the updated monitoring procedures: <i>Office of Special</i> | <p>Based on the documentation and information provided, OSEP cannot determine whether the State has a monitoring system that is reasonably designed to consider and address credible allegations of LEA noncompliance in a timely manner.</p> | <p>On or before March 10, 2022, the State must provide information to OSEP that shows that the State’s practices and procedures are reasonably designed to address credible allegations of noncompliance, such as complaints from</p> |

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| <p>credible allegations of LEA noncompliance in a timely manner.</p> | <p><i>Education Program Improvement Compliance and Results-Driven Accountability Process and Procedural Manual.</i></p> <ul style="list-style-type: none">Revised changes in General Supervision monitoring (<i>Virginia’s System of General Supervision of IDEA: Complying with State and Federal Requirements</i>). <p><u>March 4, 2021</u></p> <ul style="list-style-type: none">VDOE Process and Procedure Manual | <p>The documentation submitted by the State includes the <i>Virginia’s System of General Supervision of IDEA: Complying with State and Federal Requirements</i>, which was last updated in 2019 and the updated <i>Office of Special Education Program Improvement Compliance and Results-Driven Accountability Process and Procedural Manual</i>. The documents submitted provide a broad overview of how complaints, including complaints from parents and those from media outlets will be handled. The VDOE Process and Procedure Manual states: “For all other concerns and complaints [other than formal complaints], the SEPI office will be notified and make determinations as to the next steps, which may include an on-site monitoring visit, desk audit, or a requirement that the LEA creates a corrective action plan (CAP); and conclude with our strategic follow-up activities to ensure continued compliance such as letters of finding of noncompliance and Prong 1 and Prong 2 actions.” The guidance does not describe a timeline for any action or response and does not provide guidelines for when a desk audit or CAP would be required. It is not clear for those making the complaints or LEAs receiving the complaints, what immediate next steps are taken after complaints are made.</p> <p>During a telephone conference between OSEP and the State on January 15, 2021, the State indicated it would provide OSEP with a copy of its Special Education and Student Services (SESS) division-wide communications network procedures/policies. The State explained that</p> | <p>parents, in a timely manner. Documentation to be submitted should include the Special Education and Student Services (SESS) division-wide communications network, and documentation showing, at a minimum, examples of how other concerns and complaints have been handled under the revised procedures (those allegations that resulted in a CAP, in an audit, and in an on-site visit), and the results of those actions.</p> |
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| | | <p>these policies were designed to identify the State’s process for describing responsibilities for communicating with parents regarding some complaints raised by parents and other stakeholders. During the same call, OSEP also asked the State what factors or considerations would require a specific course of action, such as an investigation, CAP, or desk audit following a complaint, and whether the State had a guide or other document that outlined the process for handling complaints. Subsequent documentation submitted by the State did not contain information regarding any specific factors or considerations the State would weigh when determining the appropriate action to take following the submission of a complaint by parents or other stakeholders or provide examples of how differing allegations are processed.</p> | |
| <p>3. The State must provide a copy of the notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that the State has revised its policies, procedures, and practices for general supervision and monitoring to be consistent with the required actions described above.</p> | <p><u>October 29, 2020</u></p> <ul style="list-style-type: none"> • Superintendent’s Memo posted on VDOE website dated September 21, 2020. | <p>Based on the documentation and information provided, OSEP cannot determine whether the State has notified all LEAs, parent advocacy groups, and other interested parties about its revised policies, procedures, and practices for general supervision and monitoring.</p> <p>The State had to provide notice to all LEAs, parent advocacy groups and other interested parties advising them that the State has revised its policies, procedures, and practices for general supervision and monitoring.</p> <p>In response to this required action the State submitted a “Superintendent’s Memo”. The memo describes possible changes the State may make but did not describe any changes that had already been made and/or implemented.</p> | <p>On or before March 10, 2022, the State must issue a notification to all LEAs, parent advocacy groups and other interested parties advising them of all the revisions that the State has made to its policies, procedures, and practices for general supervision and monitoring. The State must also provide OSEP with proper documentation, such as a copy of, or link to, the notification used to satisfy this required action.</p> |

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No other document was submitted to demonstrate the required notice. The memo is an internal memo, in that only LEAs have access to it. No documentation was submitted to show that LEAs provided notification to parents or parent advocacy groups. Therefore, this submission, (i.e., the memo) does not satisfy the requirement to provide notice to parent advocacy groups or other interested parties. It does not appear that the State has taken any additional actions. Further, since the memo only describes possible changes, it is unclear which revisions to policies procedures/practices, if any, have been made or implemented and notice of such has been provided.

DISPUTE RESOLUTION

STATE COMPLAINT PROCEDURES

FINDING: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State is not exercising its general supervisory and monitoring responsibilities to implement its state complaint resolution system in a manner consistent with all the requirements in 20 U.S.C. § 1412(a)(11)(A) and 1416(a) and 34 C.F.R. §§ 300.149 and 300.600 and 34 C.F.R. §§ 300.151 through 300.153 for the following reason: The State does not ensure that it resolves every complaint that meets the requirements of 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, specifically in the situation where the State has developed a communication plan with an individual parent-complainant.

| REQUIRED ACTIONS | STATE SUBMITTED DOCUMENTS | OSEP ANALYSIS | REQUIRED ACTIONS/ NEXT STEPS |
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| Within 90 days of the date of this letter, | | | |
| <p>1. The State must submit to OSEP documentation demonstrating that the State has established and will implement procedures and practices to ensure that the State resolves every complaint that meets the requirements in 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, even in a circumstance where the State</p> | <p><u>September 18, 2020:</u></p> <ul style="list-style-type: none"> • The Office of Dispute Resolution (ODRAS) Due Process Requirements (Revised March 2020) • Revised <i>Complaint Resolution Procedures</i> | <p>Based on the documentation submitted, OSEP cannot determine whether the State has established procedures and practices to ensure the State resolves every complaint in accordance with the minimum State complaint procedures.</p> <p>The State had to submit documentation demonstrating that the State had established and implemented procedures and practices to ensure the State resolves every complaint in accordance</p> | <p>On or before March 10, 2022, the State must provide OSEP with documentation that the State has established, circulated, and implemented procedures and practices to ensure the State resolves every Complaint that meets the requirements in 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, even in a circumstance where the</p> |

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| <p>develops a communication plan with an individual complainant.</p> | <p>Document (Revised February 2012)</p> <p><u>October 29, 2020</u></p> <ul style="list-style-type: none"> • Superintendent’s Memo posted on VDOE website dated September 21, 2020. • Supplemental internal procedure memorandum (parent subject to a communication plan) (Draft dated 9/21/2020; no confirmation of dissemination to staff) | <p>with the minimum complaint procedures in 34 C.F.R. § 300.152.</p> <p>The documents submitted by the State have either not been updated to address the outstanding noncompliance, or in the case of “Supplemental internal procedure memorandum” are in draft form, with no indication of final approval, dissemination to staff, or implementation.</p> <p>During a conference call with the State on January 15, 2021, the State indicated to OSEP of forthcoming updated State complaint procedures, but these have not yet been submitted.</p> | <p>State develops a communication plan with an individual complainant; and</p> <p>To the extent that the State has finalized, circulated, and implemented the Supplemental Internal Procedure Memorandum, it also must provide OSEP with documentation showing, at a minimum, showing, examples of how incoming communications were handled and the results of these actions.</p> |
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DUE PROCESS COMPLAINT AND HEARING PROCEDURES

FINDINGS:

1. The State is not exercising its general supervisory and monitoring responsibilities in accordance with 20 U.S.C. §§ 1412(a)(11)(A) and 1416(a) and 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2) with regard to the following:
 - a. VDOE does not ensure and document that LEAs track the implementation of the timelines for the resolution process for due process complaints filed by parents in 34 C.F.R. § 300.510 and for calculating the beginning and expiration of the 45-day due process hearing decision timeline in 34 C.F.R. § 300.515(a), unless under 34 C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of a party to the hearing; and
 - b. VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(c)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(c)(2) in order to properly track due process hearing decision timelines.
2. Consequently, OSEP concludes that the State does not have procedures and practices that are reasonably designed to ensure a timely resolution process for due process complaints filed by parents or the timely adjudication of due process complaints that result in due process hearings, or a timely resolution process for expedited due process complaints, and the timely adjudication of expedited due process hearings.
3. Because the State does not have a mechanism to reliably determine the date on which the 45-day due process hearing timeline in 34 C.F.R. § 300.515(a) commences, the State is unable to report valid and reliable data on the adjudication of due process complaints as required under Section 618(a)(1)(F) of IDEA.
4. Because the State does not have a mechanism for reliably determining whether expedited hearing timelines are met, the State is unable to report valid and reliable data on expedited due process hearings in accordance with Section 618(a) of IDEA.

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| REQUIRED ACTIONS | STATE SUBMITTED | OSEP ANALYSIS | REQUIRED ACTIONS/ NEXT STEPS |
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| DOCUMENTS | | | |
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| <p>Within 90 days of the date of this letter, the State must: Submit documentation demonstrating that the State has revised its dispute resolution procedures and practices and is implementing those revisions, to ensure that:</p> | | | |
| <p>1.a. The State has a mechanism for tracking the timelines for the resolution process required under 34 C.F.R. § 300.510 to determine when: resolution meetings occur; the 30-day resolution period or the adjusted resolution period has concluded; and the 45-day hearing timeline commences.</p> | <p><u>September 18, 2020</u></p> <ul style="list-style-type: none"> • State Tracking Log (paper/electronic) • Sample/form closure report for hearing officers to be attached to VDOE’s guidance document for hearing officers. • Pre-Hearing document (sample) • Managing the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers Report or Order <p><u>March 4, 2021</u></p> <ul style="list-style-type: none"> • VDOE submitted draft updated language for the “Navigating the Maze” guidance document. | <p>Based on the documentation and information provided, OSEP cannot determine whether the State has a mechanism to track the timelines for the IDEA resolution process.</p> <p>The State had to submit documentation demonstrating that the State had revised its dispute resolution procedures and practices to ensure that the State has a mechanism for tracking the timelines for the IDEA resolution process. This includes tracking when resolution meetings occur, when the 30-day or adjusted resolution period concludes, and when the 45-day hearing timeline commences.</p> <p>OSEP and the State had a conference call on January 15, 2021, to discuss the required actions. During that call OSEP raised several questions and asked for specific documentation. OSEP asked for a log or other proof that Hearing Officers had been provided training on the IDEA resolution process timelines. The State informed OSEP that it kept hearing tracking logs and case closure summaries and/or reports. OSEP asked for the most recent copies of those documents.</p> <p>The State submitted draft documents in support of its efforts. It is not clear to OSEP whether the draft documents have been finalized and issued. The draft documents do not explain how the State will ensure and document that LEAs track the</p> | <p>On or before March 10, 2022, the State must provide OSEP with additional information to determine compliance. This information should include updated and finalized guidance documents (Navigating the Maze) and more detailed information about its most recent hearings, including:</p> <ul style="list-style-type: none"> • A copy of the most recent hearing tracking log. • Copies of Case Closure Summary/Reports for all hearings held between September 1, 2020 (date), and December 31, 2021 (date). • Any information related to how the State provides notice to, and addresses hearing officers’ apparent noncompliance with the referenced timeline. |

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| | | <p>resolution process timelines, including the 30-day resolution period or any adjusted resolution period.</p> <p>On a May 25, 2021, call between OSEP and VDOE, the State advised it was currently reviewing proposals for a system to provide real time tracking. OSEP was not provided with a copy of the RFP.</p> | |
| <p>1.b. The State has a mechanism for tracking the timelines for resolution meetings and the resolution period for expedited due process complaints in 34 C.F.R. § 300.532(c)(3) and for determining whether expedited due process hearings and determinations in those hearings occur within the timelines required in 34 C.F.R. § 300.532(c)(2).</p> | <p>The documents submitted for the required actions are the same as above in 1. a.</p> | <p>Based on the documentation and information provided, OSEP cannot determine whether the State has a mechanism for tracking the timelines for the resolution process for expedited due process complaints.</p> <p>The State had to submit documentation demonstrating that the State had revised its dispute resolution procedures and practices and had implementing those revisions, to ensure that the State had a mechanism in place for tracking timelines for resolution meetings and the resolution period for expedited due process complaints. In addition to the analysis for Item 1.a, incorporated herein by reference, OSEP did not receive any additional information demonstrating that the State has a mechanism for determining whether expedited due process hearings and determinations in those hearings occur within the timelines required in 34 C.F.R. § 300.532(c)(2).</p> <p>OSEP and the State had a conference call on January 15, 2021, to discuss the required actions. During that call OSEP raised several questions and asked for specific documentation. OSEP asked for a log or other proof that Hearing Officers had been provided training on the IDEA resolution process timelines. The State informed OSEP that it</p> | <p>On or before March 10, 2022, the State must provide additional documentation to show that it has a mechanism in place for tracking the timelines for resolution meetings and the resolution period for expedited due process complaints and for determining whether the expedited due process hearings and determinations are occurring within the timelines required under IDEA (34 C.F.R. § 300.532(c)(2)).</p> <p>This additional documentation should include updated and finalized guidance documents regarding expedited due process complaints and more detailed information about its most recent hearings, including:</p> <ol style="list-style-type: none"> 1. A copy of the most recent hearing tracking log. 2. Copies of Case Closure Summary/Reports for all hearings held between September 1, 2020, and December 31, 2021. 3. Any records addressing any Hearing Officer's failure to comply with VDOE guidance or IDEA (if |

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| | | <p>kept hearing tracking logs and case closure summaries and/or reports. OSEP asked for the most recent copies of those documents.</p> <p>The State submitted documents in draft form. It is not clear to OSEP whether the draft documents have been finalized and issued. The draft documents do not explain how the State will ensure and document that LEAs track the resolution process timelines for expedited due process complaints.</p> <p>On a May 25, 2021, call between OSEP and VDOE, the State advised it was currently reviewing proposals for a system to provide real time tracking (RFP mention in previous discussion). OSEP was not provided with a copy of the RFP.</p> <p>Additionally, from September 1, 2020, to December 17, 2021, OSEP has received complaints alleging that Hearing Officers have not adhered to hearing timelines required in 34 C.F.R. §§ 300.515(a) for a due process hearing, specifically allowable extensions for issuing decisions. These communications indicate there may still be confusion around the issue of hearing timelines that has not been resolved.</p> | <p>applicable).</p> |
| <p>1.c. Hearing officers are receiving appropriate training allowing them to apply and track the resolution period timelines for all due process hearings.</p> | <p>No documents were submitted relating to Hearing Officer training on tracking timelines for due process hearings and resolution periods.</p> | <p>Because the State did not submit any documentation specific to the training of Hearing Officer with respect to training on tracking the resolution period timelines for all due process hearings, the State has not provided enough information to satisfy this corrective action.</p> | <p>On or before March 10, 2022, submit to OSEP documentation showing that Hearing Officers in the State have received adequate training on the IDEA resolution period timelines and how to track them. This could include a training log showing training relevant to IDEA resolution period timelines in which Hearing Officers have participated, or similar documentation.</p> |

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| <p>2. Submit documentation demonstrating that the State has reviewed its due process hearing data collection processes and revised them, as necessary, to ensure that, consistent with the information set forth above, it will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA Section 618 dispute resolution data submission for due process hearings conducted pursuant to 34 C.F.R. §§ 300.511–300.515 and for expedited due process hearings conducted pursuant to 34 C.F.R. § 300.532 for the School Year 2020–2021 data collection. The reporting year for this data collection is July 1, 2020, through June 30, 2021.</p> | <p><u>September 18, 2020</u></p> <ul style="list-style-type: none"> • State Tracking Log (paper/electronic) • Sample/form closure report for hearing officers to be attached to VDOE’s guidance document for hearing officers. • Pre-Hearing document (sample) • Managing the Timeline in Due Process Hearings: A Guidance Document for Special Education Hearing Officers Report or Order <p><u>March 4, 2021</u></p> <ul style="list-style-type: none"> ▪ VDOE submitted draft updated language for the “Navigating the Maze” guidance document | <p>Based on the documentation provided, cannot determine whether the State’s hearing data collection processes allow the State to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for IDEA Section 618 dispute resolution data submission.</p> <p>The State had to submit documentation demonstrating that the State had reviewed its due process hearing data collection processes and revised them to ensure that it would be able to provide accurate data on fully adjudicated hearing and hearing decisions with allowable extensions for IDEA Section 618 dispute resolution data.</p> <p>The documents submitted do not demonstrate that the State has documentation demonstrating the State’s revised due process hearing data collection processes. The forms submitted were sample forms and did not contain data. During a conference call with the State on January 15, 2021, the State indicated that it had and would submit to OSEP copies of hearing tracking logs and Case Closure Summary/Reports which would track the resolution period timelines for each hearing. However, the State informed OSEP that the State does not have a process in place to actively manage hearing timelines. The State captures information regarding hearing timelines from case closure reports after completion (with or without extensions) but does not have a mechanism to determine when a decision becomes overdue or mechanism to verify the accuracy of the data. The State did not explain to</p> | <p>On or before March 10, 2022, the State must submit documentation of whether, and how, the State addresses instances where a hearing officer granted one or more extensions of the hearing timelines for improper reasons.</p> <p>In addition, the State must submit supporting documentation, beyond what has already been submitted under required actions 1.a., 1.b, and 1.c for this section, demonstrating that the State will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA Section 618 dispute resolution data submission.</p> |
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| | | OSEP what actions, if any, it takes when a hearing officer grants an extension for improper reasons. It is not clear to OSEP how the State plans to provide accurate data on fully adjudicated hearing and hearing decision with allowable extensions under IDEA Section 618 dispute resolution data. | |
| 3. Submit a copy of the notification to be issued to all hearing officers, LEAs, parent advocacy groups, and other interested parties advising them that the State has revised and is implementing procedures for tracking the timeliness of the resolution process and fully adjudicated due process hearing decisions to be consistent with the required actions described above. | No documentation was submitted for this required action. | There is no evidence the required notification has been issued as outlined in the Required Actions. The State had to submit a copy of the notification it issued to all hearing officers, LEAs, parents, and advocacy groups advising them that the State had revised and is implementing procedures for tracking the timeliness of the IDEA resolution process. | On or before March 10, 2022, the State must submit a copy of the notification to be issued to all hearing officers, LEAs, parent advocacy groups, and other interested parties advising them that the State has revised and is implementing procedures for tracking the timeliness of the resolution process and fully adjudicated due process hearing decisions to be consistent with the required actions described above. |

MEDIATION

Based on the review of documents and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement a mediation process that is consistent with the requirements of 20 U.S.C. § 1415(e) and 34 C.F.R. § 300.506. Specifically, the State’s practice of having its mediation coordinator co-mediate when the mediator is new, and permitting its mediation coordinator to be present at the mediation sessions is inconsistent with the requirement in 34 C.F.R. § 300.506(c)(1) that the State’s procedures ensure that a mediator is not an employee of the SEA and has no personal or professional interest that would conflict with the mediator’s objectivity

| REQUIRED ACTIONS | STATE SUBMITTED DOCUMENTS | OSEP ANALYSIS | REQUIRED ACTIONS/ NEXT STEPS |
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Within 90 days of the date of this letter, the State must provide:

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| 1. Documentation demonstrating that the State has established revised procedures and practices, and is implementing those revisions, to ensure that the State’s mediation coordinator, an employee of the SEA, does not co-mediate and is not present during mediation sessions. | <u>September 18, 2020</u> <ul style="list-style-type: none"> ▪ VDOE’s Frequently Asked Questions (FAQ) re: Virginia Special Education Mediation Services Documentation Mentoring Program for New Mediators | Based on information and documents provided by the State, OSEP cannot determine whether the State has provided documentation demonstrating that the State has established and implemented revised procedures and practices to ensure that the State’s mediation coordinator does not co-mediate sessions. The State had to provide documentation to OSEP demonstrating that the State had established and implemented revised procedures and practices to | To the extent that Virginia intends to continue evaluation procedures that rely primarily on the presence of an SEA employee in the mediation sessions, on or before March 10, 2022, the State must provide OSEP with additional information to determine compliance. This includes creating mediation evaluation procedures which must be consistent with the requirements of 20 U.S.C. § 1415(e) and 34 |
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| | <p><u>March 4, 2021</u></p> <ul style="list-style-type: none">▪ VDOE request to OSEP regarding allowing SEA employees to observe mediators | <p>ensure that the State's mediation coordinator did not co-mediate mediation sessions.</p> <p>The State has not provided any indication it will modify its practice regarding the mediation evaluator. The State has indicated the SEA employee will serve as an observer to evaluate mediators. However, OSEP has information that indicates that the mediation evaluator (an SEA employee) serves as the mediator or co-mediator, not only as an observer. The State has not provided any documentation or notification that this practice will cease.</p> <p>As outlined in the DMS letter, under 34 C.F.R. § 300.506(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the SEA or the LEA that is involved in the education or care of the child and may not have a personal or professional interest that conflicts with the person's objectivity. OSEP remains concerned that the presence of an SEA employee affects the objectivity and professional interests of the mediator of record, even when the SEA employee is only observing. OSEP also has concerns related to information that the SEA employee may have taken an active role in guiding the mediation itself, which is prohibited under the IDEA.</p> <p>Since the State has not provided any further information or taken any further action regarding its mediation evaluator practice, OSEP cannot determine whether the State has established and implemented revised procedures and practices to ensure that the State's mediation coordinator does not co-mediate sessions.</p> | <p>C.F.R. § 300.506. and at a minimum must include:</p> <ul style="list-style-type: none">• A requirement that mediation is conducted by only one individual.• A requirement that the mediation evaluator is only present at the hearing in an observatory role. No participation in the session is permitted.• The frequency and duration of mediation evaluations.• Prior written notice to parents participating in mediation sessions where a mediation evaluator will attend, stating that: mediation is voluntary and parents may refuse to participate in mediation if they do not want the mediation evaluator to be present; the evaluator is an employee of the SEA; the evaluator will be present only to observe; and, the evaluator is prohibited from participating in the mediation.• Parent exit surveys or other documentation demonstrating that the mediation evaluator was only present at the mediation sessions in an observatory role and did not participate. |
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| <p>2. A copy of the notification to be issued to all LEAs, parent advocacy groups, and other interested parties advising them that the State has implemented revised procedures and practices that prohibit the attendance of any employee of VDOE at a mediation session.</p> | <p>No documentation for this required action was submitted.</p> | <p>Because no documentation was submitted, OSEP cannot determine whether the State issued a notification to all LEAs, parent advocacy groups, and other interested parties advising them that the State has implemented revised procedures and practices that prohibit the attendance of any employee of VDOE at a mediation session.</p> | <p>On or before March 10, 2022, provide OSEP with a copy of the notification to all LEAs, parent advocacy groups, and other interested parties advising them that the State has implemented revised procedures and practices that prohibit the attendance of any employee of VDOE at a mediation session.</p> |
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INDIVIDUAL EDUCATIONAL EVALUATIONS

Based on a review of documents and interviews with State personnel, for the reasons set forth above, OSEP concludes that the provision of Virginia’s regulation, 8VAC20-81-170(B)(2)(a) and (e), are inconsistent with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, because the State’s regulation restricts a parent’s right to an IEE at public expense to only those areas in which the public agency had previously evaluated the child.

| REQUIRED ACTIONS | STATE SUBMITTED DOCUMENTS | OSEP ANALYSIS | REQUIRED ACTIONS/ NEXT STEPS |
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| <p>Within 90 days of the date of this letter, the State must:</p> | | | |
| <p>1. Submit a written assurance to OSEP specifying that as soon as possible but in no case later than one year from the date of this report, in accordance with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, the State will revise Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e) to, at a minimum, remove the word “component” following the word “evaluation.”</p> | <p><u>September 18, 2020</u></p> <ul style="list-style-type: none"> Written Assurance <p><u>October 29, 2020</u></p> <ul style="list-style-type: none"> Superintendent’s Memorandum dated September 21, 2020, issued via web posting Dissemination information for parent advocacy groups (Superintendent’s Sept. 21, 2020, Memo) | <p>Based on the documentation and information provided, OSEP has determined the State has complied with required action 1 for this section.</p> <p>The State had to submit a written assurance to OSEP specifying that as soon as possible the State would revise Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e) to, at a minimum, remove the word “component” following the word “evaluation.”</p> | <p>No further actions are required for this item.</p> |

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| <p>2. Submit to OSEP a copy of a memorandum that the State has issued to all LEAs, parent advocacy groups, and other interested parties instructing LEAs to comply with 20 U.S.C. 1415(b)(1) and 34 C.F.R. § 300.502(b) by also providing an IEE at public expense in areas where the LEA previously has not conducted its own evaluation, unless the LEA has demonstrated, through a due process hearing decision, that its evaluation is appropriate; and advising that the State will be revising Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e), to, at a minimum, remove the word “component” following the word “evaluation” in accordance with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502(b).</p> | <p>The documents submitted for the required actions are the same as above in required action 1.</p> | <p>Based on the documentation and information provided, OSEP has determined that the State has not complied with required action 2 for this section.</p> <p>The State had to submit to OSEP a copy of a memorandum that the State has issued to all LEAs, parent advocacy groups, and other interested parties instructing LEAs to comply with 20 U.S.C. 1415(b)(1) and 34 C.F.R. § 300.502(b) by also providing an IEE at public expense in areas where the LEA previously has not conducted its own evaluation, unless the LEA has demonstrated, through a due process hearing decision, that its evaluation is appropriate; and advising that the State will be revising Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e), to, at a minimum, remove the word “component” following the word “evaluation”</p> <p>The Memorandum submitted did not ensure compliance with the required action because the memorandum only relayed the language of the statute and regulation found at 20 U.S.C. 1415(b)(1) and 34 C.F.R. § 300.502(b)]. The memorandum did not mention the specific issue or practice of an LEA not granting IEEs in areas where the LEA had not previously conducted their own evaluations.</p> <p>OSEP has made VDOE aware of several instances of continued non-compliance with IEE requirements after Sept 21, 2020. While VDOE has taken steps to address each instance brought to its attention by OSEP, the continued noncompliance by LEA(s) raises concerns of</p> | <p>On or before March 10, 2022, the State must issue a memorandum to LEAs that addresses the specific practice of LEAs not providing IEEs at public expense in areas where the LEA has not conducted its own evaluation and instruct LEAs to comply with 20 U.S.C. 1415(b)(1) and 34 C.F.R. § 300.502(b).</p> |
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| | | <p>whether VDOE has adequately notified LEAs of the specific issue.</p> <p>The State submitted additional documents on March 4, 2021, in response to the follow-up meeting. Upon review of the updated submission, it does not appear that any additional action has taken place.</p> <p>Because the State has not yet instructed all LEAs to correct the specific issue of not providing IEEs in areas where an LEA has not yet conducted an evaluation, OSEP has determined that the State has not satisfied this corrective action.</p> | |
| <p>3. Upon completion of the changes to the Administrative Code, submit to OSEP documentation of the revisions.</p> | <p><u>December 21, 2021</u></p> <ul style="list-style-type: none"> ▪ Copy of the September 16, 2021, Town Hall advising of the pending change to the regulation. ▪ Copy of the Superintendents Memo dated December 17, 2021, advising of the completed change to the VA regulation regarding IEE removing the word "component". | <p>Based on the documentation and information provided, OSEP has determined the State has complied with required action 3 for this section.</p> <p>The state has finalized changes to its regulations found at Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e). https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section170/</p> | <p>No further actions are required for this item.</p> |
| <p>4. Review and revise its policies, procedures, and practices regarding the IEE process, and require its LEAs to conduct a similar review of their policies, procedures, and practices, to ensure that pending revision of Virginia</p> | <p>The documents submitted for the required actions are the same as above in required actions 1 and 3.</p> | <p>Based on the information and documentation submitted, this required action has not been satisfied.</p> <p>The State had to review and revise its policies, procedures, and practices regarding the IEE</p> | <p>On or before March 10, 2022, the State must provide OSEP with additional documentation/information to determine compliance. This includes:</p> <ol style="list-style-type: none"> 1. Review and revise the State's policies, |

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| <p>Administrative Code 8VAC20-81-170(B)(2)(a) and (e):</p> <p>A. VDOE and its LEAs do not limit a parent's right to obtain an IEE at public expense to the areas of assessment or evaluation components that were previously conducted by the public agency; and</p> <p>B. In a circumstance where a parent requests an IEE at public expense of their child in an area not previously assessed by the public agency, the public agency must, without unnecessary delay, either:</p> <p>i. Initiates a hearing under 34 C.F.R. § 300.507 to show that its evaluation is appropriate; or</p> <p>the public agency must ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 C.F.R. § 300.507 that the evaluation obtained by the parent did not meet agency criteria.</p> | | <p>process. The State was also directed to require LEAs to conduct a similar review of their IEE policies and procedures to ensure that LEAs do not limit a parent's right to obtain an IEE at public expense in areas that were previously evaluated. Updated LEA policies must also address the requirement that the public agency must, without unnecessary delay either, initiation a hearing to show its evaluation is appropriate or ensure the IEE is provided at public expense when a parent requests an IEE of their child in an area not previously assessed.</p> <p>No evidence was submitted to show a review and revision to the State's policies, procedures, and practices regarding the IEE process. The memo submitted discusses the IDEA regulatory requirements related to an IEE request as stated in 34 CFR § 300.502(b)(2) but does not contain discussion of any review or revisions to the State's or LEAs' IEE policies, procedures, and practices.</p> | <p>procedures, and practices regarding the IEE process, to ensure compliance with the revision of Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e), and ensure VDOE and its LEAs do not limit a parent's right to obtain an IEE at public expense and in a circumstance where a parent requests an IEE in an area not previously assessed, the public agency must, without unnecessary delay, either: Initiate a hearing under 34 C.F.R. § 300.507 to show that its evaluation is appropriate; or the public agency must ensure that an IEE is provided.</p> <p>2. Require LEAs to conduct a review of their policies, procedures, and practices, to ensure that LEAs do not limit a parent's right to obtain an IEE at public expense to the areas of assessment or evaluation components that were previously conducted by the public agency.</p> |
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