

**DMS**  
**REPORT**

**DIFFERENTIATED MONITORING AND SUPPORT**  
OFFICE OF SPECIAL EDUCATION PROGRAMS  
U.S. DEPARTMENT OF EDUCATION

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<b>STATE</b>	<b>MICHIGAN</b>
<b>DATE</b>	JANUARY 12, 2023
<b>IDEA</b>	PART C
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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 12, 2023

By E-Mail

Honorable Michael Rice, Ph.D.

State Superintendent

Michigan Department of Education

608 West Allegan Street

P.O. Box 30008

Lansing, Michigan 48909

Email: RiceM6@Michigan.gov

Dear Superintendent Rice:

The purpose of this monitoring report is to provide a summary of the results of the differentiated monitoring and support (DMS) activities conducted by the U.S. Department of Education's (the Department) Office of Special Education Programs (OSEP). As part of its DMS process, States are monitored on their general supervision systems which encompasses the States' responsibility to ensure that States and their subgrantees and contractors meet the requirements of the Individuals with Disabilities Education Act (IDEA). Those requirements include: 1) Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and 2) Ensuring that public agencies meet the program requirements under Parts B and C of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for infants, toddlers, children, and youth with disabilities. OSEP conducted its DMS monitoring in two phases: 1) Document Request and Protocol Interviews; and 2) On-site/Virtual Visit.<sup>1</sup> During Phase 1 of the DMS process OSEP examined the State's policies and procedures regarding the following monitoring priorities and components of general supervision:

- Monitoring and Improvement
- Data including the State Performance Plan/Annual Performance Report (SPP/APR)
- Fiscal Management: Single Line of Responsibility
- Dispute Resolution
- Child Find

This DMS monitoring report summarizes OSEP's review of IDEA Part C requirements regarding these monitoring priorities and components. Specifically, OSEP conducted phone interviews with representatives from the State's lead agency (LA), the Michigan Department of Education (MDE), January 1 through April 30,

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<sup>1</sup> For additional information on DMS, see [Resources for Grantees - Individuals with Disabilities Education Act](#).

2022, an onsite visit May 9 through May 11, 2022, and a virtual visit on May 16 and 17, 2022. Those interviews included staff from MDE’s Office of Great Start/Early Childhood Development and Family Education (OGS/ECD&FE) and MDE’s Office of Special Education (OSE).<sup>2</sup> In addition to staff interviews, OSEP reviewed publicly available information, policies and procedures, and other related documents submitted to OSEP. Finally, in order to receive a broad range of perspectives on the State’s system of general supervision, OSEP also solicited feedback from a range of stakeholders and local early intervention service (EIS) providers.

Based on its review of available documents and information and interviews conducted, OSEP has identified four findings of noncompliance in three areas of IDEA requirements at the conclusion of our monitoring activities. OSEP is making the following findings, listed below, and described in more detail further in the monitoring report, and has included required actions.

Finally, OSEP has not identified any noncompliance in the data component, therefore this section is not included in the narrative below. OSEP’s review of the data component did not examine implementation of the IDEA requirements by all the EIS providers within your State and OSEP cannot determine whether the State’s systems are fully effective in implementing these requirements without reviewing data at the local level.

**Summary of Monitoring Priorities and Outcomes**

<b>MONITORING COMPONENT</b>	<b>FINDINGS SUMMARY</b>
1. Monitoring and Improvement	1.1 OSEP finds that MDE does not have a general supervision system that is reasonably designed to monitor the provision of IDEA Part C services as required under 34 C.F.R. §§ 303.120, 303.342(e), 303.344(d) and 303.700 through 303.702.
2. Fiscal Management: Single Line of Responsibility	2.1 OSEP finds that the State does not conduct fiscal monitoring as required under 34 C.F.R. § 303.120(a)(1) for two areas: payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and system of payment requirements in 34 C.F.R. §§ 303.520 and 303.521. In addition, OSEP finds that the State does not consistently implement its Statewide system of payment (SOP) to ensure that IDEA Part C funds are not used for services that would have been otherwise paid for from another public or private source in its local service areas as required under the payor of last resort (POLR) requirements in 34 C.F.R. § 303.510.

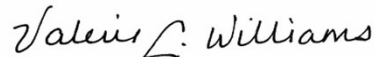
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<sup>2</sup> MDE is the LA designated by the State’s Governor that receives funds to carry out their responsibilities under IDEA Part C. Within MDE, the OGC/ECD&FE is the entity designated by the LA responsible for the implementation and monitoring of the Part C Early On early intervention service (EIS) providers.

MONITORING COMPONENT	FINDINGS SUMMARY
3. Dispute Resolution—Mediation	3.1 OSEP finds that the State does not select mediators on a random, rotational, or other impartial basis as required under 34 C.F.R § 303.431(b)(2)(ii).  3.2 OSEP finds that the State’s mediation policies and procedures are not consistent with the requirement under 34 C.F.R § 303.431(b)(7) that discussions that occur during the mediation process must be confidential.

We appreciate your efforts to ensure compliance and improve results for children with disabilities. If you have any questions, please contact your OSEP State Lead.

Sincerely,



Valerie C. Williams  
Director  
Office of Special Education Programs

cc: Part C Coordinator

Enclosure:  
DMS Monitoring Report  
Appendix

## MONITORING AND IMPROVEMENT

### Background:

During OSEP's monitoring activities, OSEP and MDE staff discussed the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocols which examine how MDE implements its general supervisory responsibility, including its policies and procedures to identify and correct noncompliance and improve educational results and functional outcomes for all infants and toddlers with disabilities. In addition, OSEP reviewed documents and other relevant materials provided by MDE.<sup>3</sup>

MDE staff reported that the State coordinates the collection of data from a number of sources in order to report annually to the Department and the public. Data are collected through (1) the Michigan State Database System (MSDS), a web-based data system that is the main database for the collection of student records; and (2) the Catamaran system. Catamaran is used to track all monitoring activities in a single location, and helps service areas analyze and interpret data, including compliance and SPP/APR reporting requirements. Catamaran is managed by the Center for Educational Performance and Information (CEPI). CEPI extracts data from the MSDS for all Federal student data reporting requirements.

MDE is responsible for monitoring 56 service areas<sup>4</sup> across the State and those service areas are responsible for the administration of the IDEA Part C program (Early On). Annually, MDE determines which service areas will be monitored by reviewing several risk factors including compliance rates, longstanding noncompliance, dispute resolution, and length of time since the previous monitoring visit. MDE reported that monitoring is completed on a cyclical schedule to ensure all service areas are monitored over a 6-year period. MDE monitors each service area through the Catamaran system, an interactive data system in which monitoring, and compliance activities are conducted.

MDE reported that findings are issued in February of each year based on data collected within the MSDS during its October, February, and June data collections. During each data collection, MDE reviews MSDS data to verify compliance with IDEA requirements. If any noncompliance is identified, a written notification is sent to the service area through the Catamaran system to the service area within three months. The written notification includes the relevant State statute, the appropriate IDEA requirement, a description of the data supporting MDE's conclusion, and the timeline required for correction.

Once a finding is issued, the service area must develop and submit a corrective action plan (CAP) within 60 days. MDE uses two types of CAPs to ensure the correction of noncompliance. The first type of CAP is the Fast Track CAP. The Fast Track CAP is issued when a service area has a high level of compliance (90% or higher) and "minor" noncompliance (no more than two findings have been identified). The second type of CAP is the Regular CAP, which is issued for all other noncompliance. After the initial CAP is received for approval by MDE, the CAP is either approved or sent back to the service area for revisions.

While onsite, MDE demonstrated how the Catamaran system allows a service area to submit evidence of correction for each finding of noncompliance. When verifying the correction of all noncompliance, MDE requires the service area to submit a random sample of 10 percent of the most recent records from the service

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<sup>3</sup> MDE provided its training materials, Catamaran Part C Monitoring Review Demo PowerPoint Presentation, Center for Educational Performance, and Information (CEPI) Student Data System District User Guide, Child Outcomes Data Manual, Monitoring and Data Document Inventory and other relevant materials.

<sup>4</sup> MDE's IDEA Part C services are provided by intermediate school districts (ISDs), also referred to as service areas.

area files within the reporting period (i.e., a minimum of ten records but not more than 50 depending on the size of the service area, whichever is greater). MDE provided evidence that it uses a checklist based on the Federal IDEA and State requirements when reviewing each set of service area data to ensure that they are implementing the specific regulatory requirements and verifying correction for each individual instance of noncompliance.

### **Legal Requirements:**

In order to effectively monitor the implementation of IDEA Part C requirements, the State must have a system that is reasonably designed to ensure that the State can meet its general supervisory responsibility for monitoring the provision of IDEA Part C services as required under 34 C.F.R. §§ 303.120, 303.342(e), 303.344 and 303.700 through 303.702.

Under 34 C.F.R. § 303.700(b), the primary focus of the State's monitoring activities must be on:

1. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities and;
2. Ensuring that EIS providers meet the IDEA program requirements, with a particular emphasis on those requirements that are most closely related to improving EI results for infants and toddlers with disabilities.

As part of the State's focus on improving results and outcomes, the State must monitor to ensure provision of IDEA Part C services to eligible children and families. Specifically, as a part of a State's responsibilities under 34 C.F.R. § 303.120(a)(2)(i) for monitoring and enforcement, the LA must monitor all EIS providers to ensure that IDEA Part C services are being provided consistent with the child's Individualized Family Service Plan (IFSP).

See Appendix I for a listing of additional legal requirements.

### **OSEP Analysis:**

MSDS captures and reports data for the Early On program. MDE staff demonstrated that the Early On component of MSDS gathers service delivery data including length, frequency, and timeliness of all services provided for children with an IFSP. This includes all children with an active IFSP in Early On, and children who have exited Early On during the reporting period, regardless of eligibility for the State's preschool special education program. The Early On component of MSDS also includes services provided for all children with an IFSP, including the initial, periodic, and annual IFSP.

MDE staff acknowledged that it does not currently have a mechanism for verifying the EI service to ensure it is accurate or consistent with those planned on IFSPs at the local service area level. As of OSEP's visit, the State was neither collecting data nor otherwise monitoring EIS providers to determine whether IDEA Part C services are being provided consistent with the IFSP. MDE staff stated that MSDS was recently enhanced to collect data related to EIS delivery but that, as of the date of OSEP's visit, the data collected by that system was insufficient to ensure compliance with the IFSP implementation requirements across its service areas.

### **Conclusion and Action Required:**

OSEP's analysis is based on the documents and information provided by MDE and interviews with the State. MDE is responsible for the general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers (service areas) receiving assistance under Part C. OSEP finds that MDE does not have a general supervision system that is reasonably designed to monitor the provision

of IDEA Part C services as required under 34 C.F.R. §§ 303.120, 303.342(e), 303.344(d) and 303.700 through 303.702. Specifically, MDE does not currently have a mechanism to verify implementation of IFSPs at the local level.

### ***Required Actions***

Policies and Procedures—within 90 days of the date of this letter the State must submit:

1. Updated policies and procedures documenting its process for monitoring or otherwise providing oversight of the provision of EI services consistent with the IDEA Part C IFSP requirements in 34 C.F.R. § 303.344(d). This oversight should include the collection of information related to the length, duration, frequency, intensity, and method of EI services in MDE's local service areas.
2. Evidence of any system updates and/or monitoring protocols that it has developed to provide oversight of IFSP implementation and provision of EI services.
3. A timeline for monitoring or other oversight activities.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this letter:

1. Actual monitoring reports or data demonstrating that MDE has implemented its revised policies and procedures and provided monitoring or other oversight of the requirements in 34 C.F.R. §§ 303.120, 303.342(e), 303.344(d).

## FISCAL MANAGEMENT

### Background:

During OSEP's monitoring activities, OSEP and MDE staff discussed the IDEA Part C Single Line of Responsibility Fiscal Monitoring protocol. This protocol examines MDE's role in specific fiscal areas including the general supervision, monitoring, funding, interagency coordination, and other responsibilities in meeting the requirements under Part C of IDEA.

OSEP examined MDE's general supervision system and fiscal monitoring activities to ensure that Early On has the necessary fiscal policies, procedures, and authority to verify compliance, issue findings of noncompliance, and take appropriate enforcement actions, where required. Early On is responsible for grant management, oversight, and fiscal accountability for the 56 service areas providing IDEA Part C services.

OSEP also examined the Statewide system which implements the fiscal elements of the single line of responsibility under IDEA by interviewing staff from Early On and reviewing the following documents: The Early On Michigan Medicaid Agreement, State School Aid Act (SSAA) Section 54d Non-supplanting Requirement Q&A, Michigan's Part C Fiscal Monitoring SOP, MDE Funding Flow Chart, the Single Line of Responsibility Mandated Activities and Interagency Projects Grant Management, the Early On Procedural Safeguards: Protecting Families' Rights, Service Area Plans, Fiscal Review Reports, Budget Detail and Budget Summary Reports, OGS Steps for Reviewing Subrecipients, local service area Grant Award Notices, in addition to other documents related to their fiscal monitoring activities.

Michigan has been a birth mandate State since 1971. The State has a two-tiered system of eligibility that includes infants and toddlers eligible under the State's Birth Mandate law, Michigan Mandated Special Education (MMSE), and infants and toddlers with disabilities found eligible for what MDE refers to as *Part C Only* services. Infants and toddlers eligible under both tiers of eligibility are served through Michigan's Part C program, Early On. MDE communicated through interviews and document submissions that all Part C services are provided without fees or other out-of-pocket expenses to families.

Prior to 2019, State funds were not allocated to support infants and toddlers served under the Part C Only tier. Through Public Act 58 of 2019 Michigan appropriated \$7.15 million in State School Aid Act (SSAA) section 54d funds to enhance Part C services beginning in fiscal year (FY) 2020. MDE reported that the amount of 54d funding has increased each year and that, in FY 2022 the State allocated \$14.15 million in 54d funding for Early On. A portion of the 54d funds, based on determination of the service areas, now goes toward supporting EI services for eligible infants and toddlers under the Part C Only eligibility category.

Prior to February 2021, MDE used the Michigan Electronic Grant System (MEGS+) and the MDE Cash Management System to track the use of IDEA Part C grant funds by Early On service areas. MDE reported that Early On service areas apply for IDEA Part C funds through an annual grant application. MDE reviews each service area's application, including budget information, and analyzes "Service Area Plans" to ensure that they meet IDEA Part C requirements. Since February 2021, the functions of MDE's MEGS+ and the Cash Management System have been moved to MDE's NexSys system. MDE now uses NexSys to process IDEA Part C grant applications, track the use of Part C grant funds by Early On service areas, review expenditures and drawdowns against the grant applications, and provide State-wide access to grant-related data. MDE reported that all applications that were originated in MEGS+ will remain and be accessible for review.

Early On is funded through Federal (including IDEA Part C and Medicaid reimbursement), State, and local funds. Michigan accesses School-Based Medicaid Services (SBS), which provides partial reimbursement to service areas for EI services including, but not limited to, evaluations, occupational therapy, physical therapy,



speech therapy, audiology, psychological services, social work, case management and assistive technology. MDE reported that accessing Medicaid through SBS does not affect a family's Medicaid insurance benefits or result in costs to the family. Michigan Medicaid reimburses Early On for services that meet Medicaid requirements and are included in an IFSP. OSEP reviewed MDE's Procedural Safeguards, *Protecting Families' Rights*, which includes a section on voluntary consent. The voluntary consent section includes a requirement that prior to billing Medicaid or any other public benefit for Part C services, MDE must obtain written consent from parent or guardian.

Michigan provides State funding for all children eligible under Part C. For infants and toddlers served under the birth mandate, State funding is provided to service areas through a reimbursement process. For infants and toddlers served under Part C only, 54d funds are allocated to service areas and available as a payor source for EI services.<sup>5</sup> To demonstrate eligibility for Part C Only, a child must demonstrate a 20 percent developmental delay or have an established condition.<sup>6</sup> Infants and toddlers with greater developmental delays or more intensive needs may also qualify for services through MMSE. Eligibility for MMSE services is determined under one of the categories of eligibility within the Michigan Administrative Rules for Special Education (MARSE). About 40 percent of children who are eligible for Early On are also eligible for services under MMSE. Any child, birth to age 3, who qualifies under MMSE is also eligible for Early On.

### **Legal Requirements:**

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements. As part of this responsibility, LAs must monitor and enforce the fiscal requirements under Part C of the IDEA, including the payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and the system of payment policies, such as use of public benefits or insurance or private insurance to pay for Part C services in 34 C.F.R. §§ 303.520 and 303.521. Further, under the payor of last resort requirements for the use of IDEA Part C funds in 34 C.F.R. § 303.510(a)(b), each State must ensure that IDEA Part C funds are not used for services that would have been otherwise paid for from another public or private source in its local service areas. Finally, under the requirements in 34 C.F.R. § 303.207, States must ensure that resources are made available under Part C for all geographic areas within the State.

See Appendix I for explanation and listing of legal requirements.

### **OSEP Analysis:**

MDE reported that it utilizes Fiscal Review Reports as a monitoring mechanism to validate the assurances that Early On service areas make on IDEA Part C applications and certify the actual expenditures that have been made and reported by the service areas. MDE further reported that these reviews are performed by members of the MDE's Office of Financial Management on a three-year cycle and are comprised of a general checklist (containing Federal and State requirements) and a component focused on particular areas of concern such as Single Audit findings, final expenditure report deviation, grant funds allocation, budget modification, timely submission of application, consultant response, turnover in staff, and last fiscal monitoring. MDE provided examples of its Fiscal Review Reports demonstrating that, as a part of its fiscal monitoring, The Fiscal Review Reports do not include payor of last resort, system of payment, or Medicaid billing. MDE reviews areas

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<sup>5</sup> Note that 54d funding may be used for either EIS to children eligible under Part C Only or Michigan's birth mandate.

<sup>6</sup> List of [established conditions](#).

including internal controls, policies and procedures, budgets, expenditures, equipment, and cash management. MDE also verifies the service areas final expenditure reports (FERs) as part of this process. MDE's fiscal monitoring is limited to cross-cutting Federal fiscal requirements and does not include monitoring of IDEA Part C fiscal requirements. However, MDE reported that it uses NexSys and the Financial Information Database (FID) to collect budget and expenditure data from service areas in order to monitor the State's compliance with IDEA Part C maintenance of effort requirements.

In its Single Line of Responsibility Mandated Activities and Interagency Projects Grant Management document, MDE provided a description of its process to ensure oversight, track deliverables and provide supervision to contractors and interagency partners utilizing IDEA Part C funds to support infants and toddlers with disabilities and their families in Michigan. MDE walked OSEP through NexSys and Project Implementation Plans to demonstrate how it tracks deliverables and the supervision of contracts.

MDE reported that it distributes 80 percent of its IDEA Part C grant awards to service areas and reserves 20 percent for State level activities. MDE further reported that it distributes IDEA Part C funds to service areas using a methodology based on population. MDE's funding formula for IDEA and 54d funds is based solely on population and does not account for the amount of local funding available (or other equity considerations). Based on this funding formula, MDE has created a structure that allows for an inequitable distribution of funds across service and geographical areas in the State.

IDEA Part C funds reserved at the State Lead Agency level are used to administer several projects through the Clinton County Regional Educational Service Agency, including child find and professional development. MDE also contracts with the Inter-Tribal Council to provide child find activities. Many services areas use IDEA Part C funds to provide EI services to children eligible under the Part C Only category. The total amount of local, State, and Federal Funding sources (including Medicaid reimbursement) varies significantly across Michigan.

MDE's service areas report through NexSys on their use of funds, including IDEA Part C funds, through expenditure reporting, including the FERs. NexSys functions include:

- Expenditure Accounting
- Project/Program/Grant Accounting
- Payment Processing
- Cash Monitoring
- Financial Reporting
- Cost Accounting and Allocation
- Appropriation Accounting Inter-Agency Grant Accounting
- Budget Control/Monitoring

MDE provided examples of its Fiscal Review Reports, which examined a service area in the following areas: policies and procedures (including internal controls), budget, general expenditures, payroll expenditures, purchased services, equipment, capital outlay, cash management, and a FER verification. OSEP was not, however, able to verify that the fiscal monitoring being conducted by MDE includes monitoring for IDEA specific requirements, such as, payor of last resort and system of payments. Additionally, MDE does not ensure that service areas are monitoring their member districts on fiscal requirements.

MDE also provided OSEP with examples of Service Plans that were submitted to MDE through NexSys. The Service Plans provided each service area with the option to select whether Medicaid is being used as a payor source. In the Service Plans submitted to OSEP, Medicaid is being accessed solely for children qualified under the birth mandate. Medicaid is not accessed for children found eligible under the Part C only category. As a

follow-up to its onsite visit, OSEP requested and received a list of service areas and that are using Medicaid as a payor source. MDE provided OSEP with an excel spreadsheet titled, Medicaid Billing by Local Service Areas, which included four years of data on when service area accessed Medicaid for the purposes of serving infants and toddlers under, the birth mandate (MMSE), Part C Only, and both MMSE and Part C Only. Based on the information in the spreadsheet there are currently 13 service areas that are not accessing Medicaid for either infants and toddlers served under the MMSE or its Part C Only designation.

MDE stated that there are service areas that utilize 54d funds to provide direct services in their member districts. However, there were service areas that distributed the funds to their member districts and the districts provided the services. MDE reported that it does not conduct fiscal monitoring at the member district level.

OSEP notes that MDE does not currently have a Method with its State Medicaid agency on file as part of its grant application with OSEP and has received conditional approval on its FFY 2021 and FFY 2022 Part C grants as a result. MDE submitted a draft of its proposed Method to OSEP on April 27, 2022. OSEP will review and respond to any methods the State is required to submit as part of the FFY 2023 application under IDEA sections 637(a)(2) and 640 to ensure financial responsibility for the provision of Part C services. OSEP's IDEA Part C Checklist for Fiscal Certification under 34 C.F.R. § 303.202, at <http://osep-part-c.tadnet.org/materials>, provides further guidance regarding this fiscal certification.

### **Conclusion and Action Required:**

OSEP's analysis is based on the documents and information provided by Michigan and interviews with staff of MDE. Based on this analysis, OSEP finds that MDE does not have a Statewide fiscal monitoring system or effective internal controls in place to ensure compliance with the following requirements:

OSEP finds that MDE is not monitoring to ensure consistent Statewide implementation of the payor of last resort requirements or its State system of payments. Under the payor of last resort requirements in 34 C.F.R. § 303.510, Part C funds may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source. Therefore, Part C funds may be used only for EI services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other Federal, State, local, or private source. Under the requirements for a statewide system in 34 C.F.R. § 303.500, each system must include written policies and procedures that meet the payor of last resort provisions in 34 C.F.R. §§ 303.510 through 303.521 (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under part C of the Act within the State).

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements. As part of this responsibility, LAs must monitor and enforce the fiscal requirements under Part C of the IDEA, including the payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and the system of payment policies, such as use of public benefits or insurance or private insurance to pay for Part C services in 34 C.F.R. §§ 303.520 and 303.521.

While MDE has a system of payments policy on file with OSEP, MDE has not ensured that its policy is being consistently implemented in all regions of the State. Consistent with the requirements in 34 C.F.R. § 303.207, OSEP is unclear how the lack of consistent implementation across the State regarding funding sources affects the State's ability to ensure that resources are made available under Part C for all geographic areas within the State. Not accessing all payor sources may result in lower numbers of eligible children being served, reduction in the provision of EIS, and diminished outcomes for infants and toddlers in those service areas. The State does

not have information on the length, duration, frequency, intensity, and method of EI services from their IFSPs. Therefore, OSEP is unable to assess the impact to services for those EI services not accessing Medicaid funds as a payment source.

### ***Required Actions***

Corrective Action Plan—within 90 days of the date of this letter the State must submit:

1. A corrective action plan that includes timelines for implementation of activities related to ensuring that MDE's system of payments is implemented consistently in all regions of the State incorporating IDEA Part C payor of last resort requirements.
2. MDE's CAP must include timelines and a list of supporting documentation that will be submitted to OSEP, including documentation related to:
  - a. Monitoring and other oversight of IDEA requirements such as Statewide implementation of its system of payments and payor of last resort policies;
  - b. Submit with its FFY 2023 grant application to OSEP under Section II.A.3.a. its method with its Medicaid agency;
  - c. Analysis of the impact of inconsistent access of Medicaid as a payor source on the provision of EI services and outcomes for infants and toddlers with disabilities; and
  - d. Training activities provided to service areas regarding IDEA Part C fiscal requirements for a statewide system implementing MDE's system of payments and ensuring compliance with IDEA payor of last resort requirements.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this letter:

1. Training and implementation for each of the remaining 13 service areas on accessing Medicaid for eligible infants and toddlers consistent with the MDE's system of payments and;
2. Implementation of MDE's State-wide SOP policy in service areas impacted by their lack of access to Medicaid funding for EI services.

## DISPUTE RESOLUTION

### Background:

During OSEP's monitoring activities, OSEP and MDE discussed the DMS Dispute Resolution protocols which examine how Michigan implements its general supervisory responsibility in the area of dispute resolution to ensure and address potential noncompliance. OSEP reviewed the State's dispute resolution policies and procedures, procedural safeguard and dispute resolution manuals, training materials, and other relevant dispute resolution reports and data provided by MDE. OSEP notes that, in accordance with 34 C.F.R. § 303.430(d)(2), the State has adopted the IDEA Part B due process hearing procedures under 34 C.F.R. §§ 303.440 through 303.449.

OSEP conducted virtual Dispute Resolution protocol interviews on February 16 and February 17, 2022, with the staff from the MDE's OGS/ECD&FE, including consultants from Early On and the MDE's OSE Program Accountability Unit Supervisor and Dispute Resolution Contact. OSEP notes, as stated above, MDE has adopted the IDEA Part B due process hearing procedures. The OSE Program Accountability Unit Supervisor and Dispute Resolution Contact, in limited collaboration with staff from the OGS/ECD&FE, provided an overview of the dispute resolution process, citing guidance from the following manuals and other relevant resources: Michigan Administrative Rules for Special Education with Related IDEA Federal Regulations (updated June 2021), Procedural Safeguards Notice (updated October 2018), Early On Procedural Safeguards: Protecting Families Rights (updated February 2019), Special Education State Complaints: Procedures and Model Forms (updated June 2021), Special Education Dispute Resolution Options (updated June 2021), Special Education Due Process Complaint Procedures (updated January 2022).

MDE has an active Memorandum of Understanding (MOU) with the Michigan Department of Administrative Hearings and Rules to execute responsibilities related to Due Process hearings. MDE has additional agreements with Special Education Mediation Services (SEMS) and Public Sector Consulting, the entity responsible for Catamaran. Catamaran, as outlined in the Monitoring and Data sections, is the data management system used by MDE to track activities and data related to IDEA and the Michigan Administrative Rules for Special Education (MARSE). According to MDE, Catamaran is designed to support districts and service areas in meeting their obligations under IDEA, MARSE, and State identified priorities. Catamaran and SEMS are managed by OSE and used by both OSE and the OGS/ECD&FE.

### Legal Requirements:

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement: the State complaint procedures requirements in 34 C.F.R. §§ 300.151 through 300.153; the mediation requirements in 34 C.F.R. § 300.506; and the due process complaint and impartial due process hearing and expedited due process hearing requirements in 34 C.F.R. §§ 300.500, 300.507 through 300.518 and 300.532.

Under 34 C.F.R. § 300.506(a), each SEA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. Under 34 C.F.R. § 300.506(b)(1), the State's procedures must ensure that the mediation process: is voluntary on the part of the parties; is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights

afforded under Part B of the IDEA; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

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 must not have a personal or professional interest that conflicts with the person’s objectivity.

See Appendix I for a listing of additional legal requirements.

### **OSEP Analysis:**

OSEP reviewed all information shared during the protocol interviews, documents submitted during the DMS document request period, and those submitted during and after the on-site and virtual visits with MDE. MDE has reported four mediations and no due process complaints for FFYs 2019, 2020 and 2021. MDE received a State Complaint in the Spring of 2022 but had otherwise not recorded a State Complaint for the previous three years.

IDEA mediation requirements are facilitated by SEMS with oversight from MDE. On June 15, 2022, OSEP received a clarification response from MDE regarding the number of mediators they currently have and the way in which they are assigned. MDE advised that they have 54 mediators who are generally assigned through their local partners (Community Dispute Resolution Centers) based on their availability once a mediation date has been set. Further, they described that an “all call” mediation request with the date, is generally sent out to the mediators covering that part of the State. MDE notes in their June 15 clarification response, as well as on the SEMS website, that occasionally specific mediators are requested by the mediation participants.

Additional documents received by email, the Agreement to Participate in a Special Education mediation and the Virtual Mediation Terms, detail an understanding and agreement set forth by SEMS, representing MDE, with the purpose of mediation participants acknowledging agreement by signature. On the Agreement to Participate in a Special Education Mediation document, there are nine statements that are meant to be agreed to and understood by mediation participants, including that confidentiality may be waived when all participants agree to do so in writing. Term number five, on the Virtual Mediation Terms document, further addresses confidentiality and directs that each party recognize that, given the use of information and communication technology, it is not possible to ensure that all communications will be confidential. Term number five, on the Virtual Mediation Terms document continues, that each party commits to minimizing the chance of inappropriate disclosures, that parties agree that no electronic, digital, or audio recording will be made of the mediation session, and that each party understands that it is not possible to completely control where or how some personal information may be collected, stored, or accessed. Finally, term number six on the Virtual Mediation Terms document, states that by signing the agreement, each party specifically agrees to mediation using an information and communication technologies platform, and releases MDE and associated mediation participants from any liability in the event of any inadvertent disclosure.

Throughout the DMS monitoring activities, the OSE Program Accountability Supervisor and Dispute Resolution Contact and representatives from SEMS and Public Sector Consulting provided insight into the system of general supervision as it relates to dispute resolution – Mediation, State Complaints, and Due Process. While the dispute resolution process is managed through Part B, intentional collaboration for internal organization that provides for the education, engagement, and alignment between MDE Part B and Part C in relation to these processes is recognized by the State as an area in need of improvement. MDE has acknowledged the need for improvement and communicated with OSEP during the protocol interviews and on-site visit that an internal work group specifically designed to establish a more collaborative and informed effort between the two programs has been formed.

## Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by MDE and interviews with the State. Based on this analysis, OSEP finds that MDE does not have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA, specifically in the area of mediation. Because MDE did not receive any Part C State complaints or due process requests in FFYs 2019, 2020, and 2021, OSEP could not determine the effectiveness of the State's due process hearing procedures and practices.

### *Findings: Mediation*

1. OSEP finds that the MDE's mediation policies and procedures are not consistent with the requirement under 34 C.F.R § 303.431(b)(2)(ii) that the LA must select mediators on a random, rotational, or other impartial basis. MDE reports that an "all call" request with the date of mediation meeting is generally sent out to the mediators covering the area of the State where the request originated. Further, the SEMS website states that if parties want to choose a specific mediator from the roster, both the school and parent must agree on the individual. The State's use of an "all call" request and the school and parent selection of a mediator do not ensure that mediators are selected on a random, rotational, or impartial basis, and therefore are out of compliance with the IDEA requirement.
2. OSEP finds that MDE's mediation policies and procedures are not consistent with the confidentiality requirements under 34 C.F.R § 303.431(b)(7), that ensure discussions that occur during the mediation process are confidential. On the SEMS website, participants are encouraged to consider participating in virtual mediation. In the Virtual Mediation Terms document provided by SEMS, participants are advised that it is not possible to ensure all communication will remain confidential. In order to participate in the virtual option, parties are required to sign the agreement, acknowledging release of liability in the event of any disclosures. Further, what is posted on the SEMS website under "Virtual Meetings," is different than what is captured in the Virtual Mediation Terms document. Based on what is posted on their website, their virtual mediation platform is secure.

### *Required Actions*

Policies and Procedures—within 90 days of the date of this letter the State must submit:

1. Documentation demonstrating that it has procedures and practices in place that are reasonably designed to implement the IDEA dispute resolution requirements of IDEA in accordance with 34 C.F.R. § 303.431. Specifically, MDE must:
  - a. Provide evidence that mediators are selected on a random, rotational, or other impartial basis.
  - b. Provide evidence that discussions occurring during the mediation process, whether in-person or virtual, are confidential.

### *Recommendations*

1. Under 34 C.F.R § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time. Based on the information provided by MDE, it is unclear how a decision is made in determining whether facilitation or mediation will be utilized for the resolution of concerns. The definition of mediation, as provided by MDE, is in alignment with the Federal regulations. MDE defines facilitation as an early dispute resolution option which may be helpful during meetings involving complex or potentially challenging special education issues. Based on information retrieved from the SEMS website, mediation is

considered an option only if there is a specified area of disagreement. The SEMS website also reflects that mediation is an option for any dispute.

- OSEP recommends that MDE better define their practice of using facilitation as an early dispute resolution option and mediation as an option designated by IDEA. Further, OSEP recommends that MDE have more concise and consistent intake practices for determining use of these dispute resolution options. Under 34 C.F.R § 303.431(d), a lead agency may establish procedures to offer to parents and EIS providers that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party (1) who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and (2) who would explain the benefits of, and encourage the use of, the mediation process to parents.
2. Under 34 C.F.R § 303.431(b)(5), if the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution. On the SEMS website, a feature of mediation is described as the ability to allow parties to draft an agreement.
    - OSEP recommends changing the verbiage on the SEMS website under Compare Resolution Options, and where otherwise stated, to reflect that if parties resolve a dispute through the mediation process, the parties must execute a “legally binding agreement.”
  3. OSEP recommends that MDE better define their service agreement with SEMS and other service providers who may receive funding through IDEA. As part of a State’s system of general supervision, there must be mechanisms in place to monitor for services and other deliverables provided by their grantees. The 2014 Request for Proposal (RFP): Fiscal Agent for Michigan’s Statewide Dispute Resolution Program is used by OSE as the operational grant agreement, according to MDE. SEMS leadership refers to the 2014 RFP as the foundation for the SEMS grant objectives, and MDE considers SEMS a grantee. OSEP is unclear and needs more information on how MDE is using the service agreement with SEMS and what general oversight mechanisms are in place for this agreement.



# APPENDIX

## Monitoring and Improvement Legal Requirements:

In order to effectively monitor the implementation of Part C of the IDEA, the State must have policies and procedures that are reasonably designed to ensure that the State can meet:

1. Its general supervisory responsibility as required in 34 C.F.R. § 303.120.
2. Its monitoring responsibilities in 34 C.F.R. §§ 303.700 through 303.702, and
3. Its responsibility to annually report on performance of the State and of each Early Intervention Service (EIS) program, as provided in 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2).

A State's monitoring responsibilities include monitoring compliance by its EIS programs and providers (regardless of whether Federal IDEA Part C funds) with the requirements of IDEA Part C, to ensure that the LA can effectively carry out its general supervision responsibility under IDEA Part C, consistent with 34 C.F.R. § 303.120(a)(2).

Under 34 C.F.R. § 303.700(b), the State's monitoring activities must primarily focus on:

4. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and
5. Ensuring that EIS programs and providers meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities. Improving educational results and functional outcomes for all children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 303.700(d), the State also must ensure that when it identifies noncompliance with IDEA Part C requirements by EIS programs and providers, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance, as required under 34 C.F.R. § 303.700(e).

Further, under 34 C.F.R. § 303.120 the State must have a system that includes a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following: (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act; and the monitoring of programs and activities used by the State to carry out Part C of the IDEA (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the IDEA), to ensure that the State complies with Part C of the Act. The State must also have in effect a system that includes monitoring and enforcement requirements in 34 C.F.R. §§ 303.700 through 303.701 and 303.704.

In addition, under 34 C.F.R. § 303.700(a)(1), the State must monitor the implementation of IDEA Part C and under 34 C.F.R. § 303.700(a)(4) must report annually on the performance of the State and each EIS program on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the LA must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 303.700(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 303.700(c). Each State also must use the targets established in the State's performance plan under 34 C.F.R. § 303.701 and the priority areas described in 34 C.F.R. § 303.700(d) to analyze the performance of each EIS program located in the State. 34 C.F.R. § 303.702.

**Data Legal Requirements:**

To meet the data reporting requirements of IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224 and 303.701(c) and 303.720 through 303.724, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

**Fiscal Management Legal Requirements:**

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements. As part of this responsibility, LAs must monitor and enforce the fiscal requirements under Part C of the IDEA, including the payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and the system of payment policies, such as use of public benefits or insurance or private insurance to pay for Part C services in 34 C.F.R. §§ 303.520 and 303.521. If the State LA identifies noncompliance, it must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the LA's identification of the noncompliance consistent with 34 C.F.R. § 303.120(a)(2)(iv) and 303.700(e). Further, under 2 C.F.R. § 200.303, the LA must establish effective internal controls that provide reasonable assurance of compliance with "Federal statutes, regulations, and the terms and conditions of the Federal award," and the LA must monitor its compliance with the requirements of the Federal award.

**Dispute Resolution Legal Requirements:**

Under 34 C.F.R. § 303.421(a), the State must ensure that prior written notice is provided to parents a reasonable time before the EIS provider proposes or refuses to initiate or change the identification, evaluation or placement of the infant or toddler or the provision of early intervention services. Under 34 C.F.R. § 303.421(b), this notice must be in sufficient detail to inform parents about the dispute resolution procedures.

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement:

1. The State complaint procedures requirements in 34 C.F.R. §§ 303.432 through 303.434;
2. The mediation requirements in 34 C.F.R. § 303.431; and
3. The due process complaint and impartial due process hearing requirements 34 C.F.R. §§ 303.440 through 303.449.

***State Complaint Procedures***

Under 34 C.F.R. § 303.432, each LA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.434. Under 34 C.F.R. § 303.434, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of Part C of the Act or the Part C regulations including the facts on which the statement is based. Under 34 C.F.R. § 303.434(c), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Under 34 C.F.R. § 303.433(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an onsite investigation, if the LA determines that an investigation is necessary.

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
  - a. At the discretion of the public agency, a proposal to resolve the complaint; and
  - b. An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 303.431;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this part; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
  - a. Findings of fact and conclusions; and
  - b. The reasons for the LA’s final decision.

Under 34 C.F.R. § 303.433(b)(1), the State’s procedures must permit an extension of the 60-day time limit only if:

1. Exceptional circumstances exist with respect to a particular complaint, or
2. The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 C.F.R. § 303.433(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

### ***Mediation***

Under 34 C.F.R. § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to dispute involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. Under 34 C.F.R. § 303.431(b)(1), the State’s procedures must ensure that the mediation process—

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent’s right to a hearing on the parent’s due process complaint, or to deny any other rights afforded under Part C of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Under 34 C.F.R. § 303.431(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the LA or an EIS provider that is involved in the provision of early intervention services or other services to the child and may not have a personal or professional interest that conflicts with the person’s objectivity.

Under 34 C.F.R. § 303.442(b)(1), the LA must convene a resolution meeting within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 303.433. Under 34 C.F.R. § 303.510(a)(3), the resolution meeting need not be held if the parent and the LA agree in writing to waive the meeting; or the parties agree to use the mediation process described in 34 C.F.R. § 303.442(a)(3).

Under 34 C.F.R. § 303.442(b, if the LA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. Under 34 C.F.R. § 303.442(c) the 30-day resolution period may be adjusted to be shorter or longer if one of the

circumstances identified in that paragraph are present. Under 34 C.F.R. § 303.447(a), the LA agency must ensure that not later than either 30 days or 45 days (consistent with the LA's written policies and procedures adopted under 34 C.F.R. § 303.440(c)) after the expiration of the 30-day period in 34 C.F.R. § 303.442(b), or the adjusted 30-day time periods described in 34 C.F.R. § 303.442(c)) that a final decision is reached in the hearing; and a copy of the decision is mailed to each of the parties, unless under 34 C.F.R. § 303.447(c), a hearing officer grants a specific extension of the 45-day timeline at the request of either party. Any party aggrieved by the findings and decision made under 34 C.F.R. §§ 303.440 through 303.445 who does not have the right to an appeal under 34 C.F.R. § 303.446(b), and any party aggrieved by the findings and decision under 34 C.F.R. § 303.446(b), has the right to bring a civil action with respect to the due process complaint under 34 C.F.R. § 303.440.