

DMS REPORT

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

STATE	MONTANA
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DATE	JANUARY 24, 2023
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IDEA	PART C
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 24, 2023

By Email
Honorable Charlie Brereton
Director
Montana Department of Public Health and Human Services
111 North Sanders, Room 301
P.O. Box 4210
Helena, Montana 59604
By E-mail: charles.brereton@mt.gov

Dear Director Brereton:

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 encompass States' responsibilities 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. During the DMS process¹ OSEP examined the State's policies and procedures and State-level implementation of these 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

This DMS monitoring report summarizes OSEP's review of IDEA Part C requirements regarding these monitoring priorities and components. OSEP conducted phone interviews with representatives from the State's lead agency (LA), the Montana Department of Public Health and Human Services (MT DPHHS), Early Childhood and Family Support Division (ECFSD), during the month of January 2021 for the fiscal management component and January through March 2022, for four areas: Monitoring and Improvement, Data, Fiscal Management and Dispute Resolution.

¹ For additional information on DMS, see [Resources for Grantees - DMS](#).

Additionally, DMS monitoring was conducted virtually on June 7–8, 2022, and an onsite visit occurred on June 14–16, 2022. OSEP staff met with Wendy Studt, the Part C Coordinator for the Montana Milestones Program, the State’s early intervention (EI) program, and other State personnel responsible for implementing the State’s general supervision, data, fiscal, and local systems. Montana Milestones oversees five regional early intervention service (EIS) providers that are responsible for providing IDEA Part C services to eligible children and families. Supervision and support are provided by the State’s program administration staff including, a Part C Coordinator, a Part C Supervisor/EI Unit Manager, Program Support Staff, and Fiscal Bureau Chief. In addition to staff interviews, OSEP reviewed publicly available information, and ECFSD submitted policies and procedures including MT DPHHS Part C Compliance Document (2013), MT DPHHS General Contract Template (March 25, 2022), Attachment A to Contract No. (Scope of Work Part C/FES), Part C Early Intervention Dispute Resolution Handbook (August 2013), Montana Part C Procedural Safeguards (2013), and other related documents. 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 eight findings of noncompliance with 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, including any required actions.

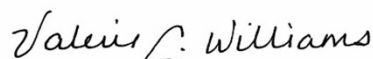
Summary of Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDINGS SUMMARY
1. Monitoring and Improvement	1.1 OSEP finds that DPHSS does not have a system reasonably designed to monitor its EIS providers to ensure compliance with IDEA Part C requirements, such as timely service provision to ensure there are no waitlists for services, as required under IDEA 34 C.F.R. §§ 303.120(a) and 303.700.
2. Data	2.1 OSEP finds that DPHSS does not have a system reasonably designed to collect valid and reliable data as needed to report annually to the Secretary under 34 C.F.R § 303.702(b)(2) on three of the indicators established by the Secretary for the State performance plans, as required under IDEA 34 C.F.R. §§ 303.124, 303.224 and 303.701(c).
3. Fiscal Management: Single Line of Responsibility	3.1 OSEP finds that DPHSS does not have a general supervision system reasonably designed to monitor its EIS providers to ensure fiscal compliance with IDEA Part C, as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b). Specifically, the DPHSS monitoring system is not reasonably designed to

MONITORING COMPONENT	FINDINGS SUMMARY
	<p>identify and verify correction of fiscal noncompliance.</p> <p>3.2 OSEP finds that DPHHS has failed to monitor its EIS providers for compliance as required under 34 C.F.R. § 303.120(a) for the statewide system of payments policy requirements in 34 C.F.R. §§ 303.520 and 303.521.</p> <p>3.3 OSEP finds that DPHHS does not have procedures and practices that are reasonably designed to ensure the appropriate use of IDEA Part C funds as required under 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200.3.2 In addition, OSEP finds that the State has not established effective internal controls that provide reasonable assurance of compliance by its EIS providers with “Federal statutes, regulations, and the terms and conditions of their Federal award,” as required under 2 C.F.R. § 200.303.</p>
<p>4. Dispute Resolution</p>	<p>4.1 OSEP finds that Montana Milestones’ State complaint policies and procedures are inconsistent with 34 C.F.R. § 303.434(a). Specifically, publicly available documents indicate that families must engage in an informal process prior to filing a formal State complaint.</p> <p>4.2 OSEP finds that the State does not maintain a list of trained mediators as required under 34 C.F.R. § 303.431(a)(2).</p> <p>4.3 OSEP finds that the State does not ensure hearing officers possess knowledge of IDEA Part C consistent with 34 C.F.R. § 303.435(a).</p>

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

Page 4—Lead Agency Director

cc: Part C Coordinator

Enclosure:

DMS Monitoring Report
Appendix

MONITORING AND IMPROVEMENT

Background:

During OSEP's monitoring activities, OSEP reviewed the State's general supervision and monitoring policies and procedures. OSEP and Montana Milestones staff discussed the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocols, which examines how Montana implements its general supervisory responsibilities, including policies and procedures to identify and ensure correction of noncompliance and improve educational results and functional outcomes for all infants and toddlers with disabilities. Montana Milestones provided OSEP with copies of its monitoring tools and sample reports which demonstrate the performance of its recently updated data system.

Legal Requirements:

To effectively monitor the implementation of Part C IDEA requirements, the State LA must have policies and procedures that are reasonably designed to ensure that the State can meet its general supervision responsibilities by monitoring its EIS providers as required under 34 C.F.R. §§ 303.120 and 303.700 through 303.702. In addition, the State must annually report on the performance of each EIS program as required under 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2). In Montana, each of the five EIS providers are also EIS programs for reporting purposes in the State Performance Plan/Annual Performance Report (SPP/APR).

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

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

As described in the introduction to the Federal fiscal year (FFY) 2020 SPP/APR submitted in February 2022, Montana's general supervision system consists of the following components to identify and correct noncompliance in a timely manner and monitor its five EIS providers; a contractor annual report, a data verification process, a dispute resolution system, annual determinations and a system of technical assistance and professional development.

OSEP was unable to verify the implementation of these components through the interviews with DPHHS Montana Milestones staff, and review of State submitted documentation. OSEP found that the State did not have accurate and sufficient written policies and monitoring procedures that can help the State LA determine whether EIS providers are in compliance with IDEA, including whether IDEA Part C services are being implemented as written on the Individualized Family Service Plans (IFSPs). In addition, the State does not have a data system that is specific to IDEA Part C reporting requirements and thus State staff are unable to use the data system to monitor for compliance.

During OSEP's interviews with State staff, staff admitted that Montana Milestones lacks a clear set of written policies and procedures related to the IDEA Part C monitoring system. As a result of the OSEP monitoring

activities, Montana Milestones staff noted that they have begun to develop written policies and procedures to memorialize its monitoring activities.

As explained by staff, Montana Milestones' monitoring is dependent upon its data system. Montana Milestones' staff explained during interviews the limitations of the data system, the workarounds developed, the lack of capacity for comprehensive monitoring, and the State's inability to monitor the provision of services and verify IFSP implementation and compliance by its EIS Providers. The data system limitations have an overall impact on Montana Milestones' ability to effectively monitor its EIS providers.

Staff elaborated that Montana Milestones monitoring is currently limited to the collection of SPP/APR data through its recently adopted data system, MedCompass. Staff further stated that Montana Milestones is not able to track other timeline requirements, such as service delivery, or monitor other IDEA related requirements in the MedCompass system. In conversations with OSEP, Montana Milestones staff admitted they do not have the capability to monitor, using the MedCompass system, on the provision of services and other requirements beyond those data elements required in the SPP/APR, such as SPP/APR Indicator 1 (timely receipt of services), Indicator 7 (45-day timeline), and Indicator 8 (early childhood transition). Furthermore, the data system does not allow Montana Milestones to monitor IFSPs to ensure that they include information about the length, duration, frequency, intensity, and method of delivering the early intervention services. Montana Milestones does not currently have a mechanism, either through MedCompass or otherwise, for ensuring that its EIS providers are providing early intervention services consistent with those listed on IFSPs.

OSEP conducted separate interviews with State staff, the State's five EIS providers, and parent focus groups. As a result of these interviews, and an onsite review of IFSP documents, OSEP staff noted a discrepancy between the high levels of compliance reported by the State in its SPP/APR and actual implementation. The State has reported in the SPP/APR under Indicator 1 (timely provision of services), 100 percent (FFY 2020) and 98.21 percent (FFY 2019). Despite the high performance reported in the SPP/APR, parents reported during interviews (and OSEP confirmed through file reviews) that they experienced waiting lists for the IDEA Part C services listed on eligible infant and toddler's IFSPs and that families often have to travel long distances to receive services.

During interviews with the five EIS providers, staff from two EIS providers reported waiting lists lasting between 4-6 months, and in some cases infants and toddlers aged out of the Part C program. This was also reflected in the approximately 25 IFSPs OSEP reviewed, which indicated "waiting list" in the service delivery section and a date. When OSEP staff asked Montana Milestones about the discrepancy between the SPP/APR performance and the actual implementation evidence, State staff noted that the SPP/APR data are self-reported by EIS providers. The State staff speculated that the EIS providers may consider services timely if one service such as service coordination is timely initiated, even if additional services in the IFSP are not timely initiated.

The State's definition for timely services is within 30 days of the IFSP completion and parent consent (Montana's Rules and Regulations, pg. 93). In addition, the MedCompass Part C and Family Education and Supports Early Childhood and Family Services Division (ECFSD) Manual outlines the process the EIS providers must complete to validate the initiation of services on the IFSP:

- Once the IFSP is completed, the Family Support Specialist (Service Coordinators) will receive a task to "Validate the Initiation of Services." This is a required reporting requirement for Part C of the IDEA to ensure the services listed on the IFSP are initiated within 30 days of the completion of the IFSP.
- Access to the Initiation of Services validation is straight from the task itself which will require the user to document the actual date the service was initiated. If it is more than 30 days from the completion of the IFSP, the user is required to document the reason why the service was initiated late.

- All services identified must be initiated within 30 days. For example, if a member has three services, all services must be initiated and, if not, a reason must be documented by service. A child is “yes” if all, and “no” if one or more haven’t been initiated. If all of the services that are “no” have the “exceptional family reason,” it is still counted as timely.

Despite the State having documentation which outlines the correct data reporting process, they are not monitoring to ensure that the EIS providers are correctly entering this information into the MedCompass system and are therefore not timely identifying and verifying the correction of noncompliance of SPP/APR data. 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.

Conclusion and Action Required:

OSEP’s analysis is based on the documents and information provided by Montana, and interviews with, Montana Milestones. Based on this analysis, OSEP finds that the LA does not have a system reasonably designed to monitor its EIS providers to ensure compliance with IDEA Part C requirements. Specifically, DPHSS, as the LA, does not have a monitoring system as required by 34 C.F.R. § 303.120, that is reasonably designed to identify and correct findings of noncompliance, particularly those requirements related to ensuring the timely provision of early intervention services to infants and toddlers with disabilities and their families. It does not 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 EIS program, as provided in 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2).

Required Actions

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

- Updated policies and procedures documenting its process for monitoring its EIS providers on key IDEA Part C requirements such as ensuring timely IFSP service provision requirements based on a review of child records and all other relevant available data (once the State has resolved its data finding below). These policies must reflect that all services (not just service coordination) that are identified on the IFSP must be timely initiated and provided.

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

- The State LA must submit evidence that all five EIS providers were monitored for IDEA Part C requirements, including timely service provision and, if a finding was issued, a copy of the monitoring report which reports identifies the findings of noncompliance with IDEA Part C requirements, and include the one-year timeline for correction.

DATA

Background:

During OSEP's monitoring activities, OSEP and Montana Milestones staff discussed the DMS Data and SPP/APR protocols, which examine how Montana implements its general supervisory responsibility, including how the State collects and reports valid and reliable data in a timely manner. In addition, OSEP reviewed the State's data processing guides including the Family Education and Support (FES) Part C workflows, Part C Business Rules, and IFSP Services Report. OSEP also reviewed the sample data extracts, an evaluation table document, and other relevant data reports and materials provided by the State.

During the monitoring calls with OSEP, DPHHS identified the following five data systems currently used in the State that are related in some way to the IDEA Part C program:

1. Combined Healthcare Information and Medicaid Eligibility (CHIMES) – Montana Milestones staff use this system to search for Medicaid clients (members), to either create a Part C identifier or use the already created Part C identifier. This identifier confirms Part C eligibility and triggers the ability for the EIS provider to bill Medicaid for Part C services. Providers are not able to bill for Part C services if the Part C identifier is not attached to the client.
2. MedCompass –The MedCompass system is a statewide healthcare management tool designed to enable cross-collaboration between providers and clients. Montana Milestones uses the data system to capture case management activities such as IFSP referrals, initial intakes, and evaluations. The Part C Coordinator and Data Manager have access to enter data into this system. Data is also entered by the five EIS providers.
3. Montana Medicaid Information System (MMIS) – MMIS is an integrated group of procedures and computer operations (subsystems) developed to mechanize information retrieval and claims processing on a statewide level. While this program is not created for IDEA Part C nor used by Montana Milestones staff, EIS providers capture Part C service coordination and related services rendered for purposes of billing Medicaid. The system only allows data entry for one date per month for service coordination even if they provided service coordination on more than one date per month. EIS providers receive training by Montana Medicaid directly. Montana Milestones staff do not use this system.
4. State Accounting Business Human Resources System (SABHRS) –This is the payment system used by the State. Part C staff have “view only” access. The Fiscal Manager uses the SABHR system to pull data reports on expenditures.
5. Agency Wide Accounting and Client System (AWACS) – This data system serves as a bridge between MMIS and SABHRS to ensure vendors are in the system. It is a pass-through system that automatically processes each evening.

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.

OSEP Analysis:

As described in the monitoring section and confirmed during interviews with the State, Montana Milestones staff explained that the MedCompass data system does not currently have the capabilities to track service provision. The State uses the MedCompass system for case management and functions as a tool for collecting data for reporting on the SPP/APR indicators. For example, the State staff explained the MedCompass system can generate a form to document the initiation of the IFSP process (Indicator C-7: 45-Day timeline) and document the IFSP initial date of services (Indicator C-1: timely provision of services). MedCompass is a task-based system; tasks are generated onto a form to manually validate the initial services (based on service initiation date).

The document the State created from MedCompass captures the initial date of services which the State uses to determine if the services were provided within the required 30 days. As stated in the previous section, the State's definition for timely services is considered to be within 30 days of the IFSP completion and parent consent (Montana's Rules and Regulations, pg. 93). If the EIS provider indicates on the form that the services were not provided within 30 days, they must explain why the delay occurred and provide the reasons for the delay. The completed form is uploaded into the child's file in the MedCompass system.

The issues described during the interviews raise concerns about the validity of the data for SPP/APR Indicators C-1 (timely provision of services), C-2 (services in natural environments), and C-7 (45-day timeline). Montana Milestones staff did not raise any specific examples of whether other data, such as IFSP meeting dates or transition dates, imported incorrectly or if such dates are currently being systematically verified. State staff were transparent about lacking a mechanism to validate data entered by EIS providers and acknowledged SPP/APR data is likely inaccurate.

Specifically, the information that OSEP staff obtained both from interview with parents and EIS providers as well as a IFSP record review raises questions about the accuracy of data regarding timely service initiation and provision, natural environments, and 45-day timeline. For example, as discussed in the Monitoring and Improvement section, there is a discrepancy between high rates of compliance for Indicator C-1 and the existence of waiting lists EIS providers use initiation of service coordination as the measure for timely services which doesn't account for all services listed on a child's IFSP.

Similarly, the high percentage reported for natural environments does not appear consistent with the description by parents and EIS providers of the need to travel for related services. Parents reported traveling great distances to distant cities and neighboring counties requiring long hours traveling at a time each way to obtain services. EIS providers confirmed that it is a common occurrence that parents must travel long distances for IFSP services based on factors that include a lack of qualified providers in the local area, a lack of qualified providers covered by private insurance, and extremely long waiting lists for local qualified providers. Because the State does not monitor beyond the collection of EIS providers' self-reported SPP/APR data, Montana Milestones has no mechanism to verify its data or to understand the apparent discrepancies.

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by DPHHS, and interviews with, Montana Milestones, as the LA. Based on this analysis, OSEP finds that DPHHS as the State LA does not have a data system that is reasonably designed to collect and report valid and reliable SPP/APR data for Indicators C-1, C-2 and C-7 to the Department and the public in a timely manner and ensures that the data collected and

reported reflects actual practice and performance under 34 C.F.R. §§ 303.124, 303.224 and 303.701(c) and 303.720 through 303.724.

Required Actions

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

- Procedures the State uses to verify the SPP/APR data for Indicators C-1, C-2 and C-7 that are submitted by its EIS providers to the LA as required under 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.

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

- The State will provide with its FFY 2022 SPP/APR an explanation of how its data for Indicators C-1, C-2 and C-7 are valid and reliable and reflect the measurement. The explanation should include a discussion of the methodology used by the State to verify the validity and reliability of the data for C-1 (the percentage of infants and toddlers with IFSPs who receive all EI services on their IFSPs in a timely manner); C-2 (the percentage of infants and toddlers with IFSPs who primarily receive EI services in the home or community-based settings); and C-7 (the percentage of infants and toddlers with IFSPs for whom an evaluation and initial assessment and an initial IFSP meeting were conducted within Part C's 45-day timeline).

FISCAL MANAGEMENT

Background:

During OSEP's monitoring activities, OSEP and Montana Milestones staff discussed the IDEA Part C Single Line of Responsibility Fiscal Monitoring protocol. This protocol examines Montana's role in specific fiscal areas including general supervision, monitoring, funding, interagency coordination, and other responsibilities in meeting the requirements under Part C of IDEA. OSEP also reviewed the State's fiscal contract templates, sample scopes of work, system of payments, and other relevant fiscal documents provided by the State. In accordance with its system of payments on file with OSEP, Montana Milestones accesses private and public insurance (Medicaid) with the consent of parents and does not charge family fees.

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, use of funds requirements in 303.501, and the system of payment policies in 303.510, 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 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). LAs must also monitor for IDEA Part C fiscal requirements including monitoring EIS providers for the use of Federal IDEA Part C funds and its distribution within the State as required by 34 C.F.R. §§ 303.120(a), and 303.205, as well as the coordination of all available funding sources as required by 34 C.F.R. § 303.120(b).

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

OSEP examined the State's general supervision system and fiscal monitoring activities to ensure that Montana Milestones has the necessary fiscal policies, procedures, and authority to verify compliance, issue findings of noncompliance, and take appropriate enforcement actions, where required. Montana Milestones is responsible for grant management, oversight, and accountability for five EI providers that are contracted to receive Part C funds based on the number of infants and toddlers served.

OSEP also examined the Statewide system which implements the fiscal elements of the single line of responsibility under IDEA by interviewing staff from Montana Milestones and the DPHHS Fiscal Staff, as well as reviewing the following documents: Montana Part C Compliance Document (July 2013), DPHHS General Contract Template (March 25, 2022), Attachment A to Contract No. (Scope of Work Part C/FES), Montana's Part C Program System of Payments (2013), Montana Part C Written Notification for the Use of Private Insurance and Public Benefits (2013), Montana Operations Manual (DPHHS Contract Management and Post-Award Obligations and Issues Policies, 2020), ECFSD Invoice Processing Steps Graphic and other fiscal related policies.

Montana Milestones contracts² with five independent organizations (EIS providers) responsible for the provision of Part C services. DPHHS utilizes a general contract template for all LA contractors and attaches a scope of work specific to each program. The State's scope of work for EIS providers requires compliance with performance-based standards in the provision of services to infants and toddlers and their families. The contracts are designed to ensure the accountability of EIS providers in implementing IDEA Part C requirements. Under the scope of work, the EIS provider agrees to be available for program compliance and quality reviews on an annual basis. Montana Milestones makes annual determinations based solely on performance, results and compliance indicators.

As mentioned in the data section, the LA utilizes a data system called MMIS (Montana Medicaid Insurance System) to determine the number of children served by the EIS providers to calculate the bundled rate. Although MMIS is the State Medicaid system, Montana Milestones use the system for this purpose. The Montana Milestones staff, however, have no access to MMIS. EIS provider staff receive training from the LA's Medicaid Office, as Montana Milestones has no role in the oversight of the MMIS data system. Montana Milestones staff do not have the authority to certify or verify payments through the MMIS system. In addition, LA staff are not given user roles in MMIS, and have no ability to account for payments made from MMIS to EIS providers, including being able to account for how funds are spent.

During interviews that OSEP conducted with State staff, and all five EIS providers, as well as document reviews, OSEP learned that the State does not conduct fiscal monitoring for IDEA Part C requirements, including 34 C.F.R. §§ 303.500 (i.e., use of funds, payor of last resort, system of payments), 303.501 (i.e., permissive use of funds), 303.510 (i.e., payor of last resort), 303.520 and 303.521 (system of payments). Both EIS provider staff and State staff confirmed that DPHHS does not conduct fiscal monitoring of its EIS providers. The State also does not monitor EIS provider contracts for IDEA Part C fiscal requirements, as well as other cross-cutting fiscal requirements, including applicable provisions in the General Education Provisions Act (GEPA), the Education Department General Administrative Regulations (EDGAR) in 34 C.F.R. Part 76, and the OMB Uniform Guidance in 2 C.F.R. Part 200.

Monitoring for IDEA Part C fiscal requirements includes monitoring EIS providers for:

1. Use of Federal IDEA Part C funds and its distribution within the State as required by 34 C.F.R. §§ 303.120(a), and 303.205,
2. Coordination of all available funding sources as required by 34 C.F.R. § 303.120(b).

For monitoring of use of Federal IDEA Part C funds, OSEP notes that DPHHS staff failed to provide evidence of contractual oversight of EIS providers including the general administration and supervision of EIS programs and activities administered by contracted organizations, and EIS providers receiving assistance under Part C of the Act as required by 34 C.F.R § 303.120(a)(1).

Regarding the monitoring of all available funding sources for the IDEA Part C system, OSEP notes that DPHHS identified concerns regarding how EIS providers are paid. Specifically, the State is conducting a study of its bundled rate. In interviews with DPHHS staff, the State shared that Montana established a bundled rate in the 1980s to provide comprehensive Part C programming in regions throughout the State. The bundled rate is

² The fiscal bureau chief mentioned that the State considers its five EIS providers or programs to be subrecipients, as opposed to contractors. In discussions with the State, OSEP informed the State that if DPHHS is going to treat their EIS providers as subrecipients, the State will be responsible for conducting subrecipient monitoring in accordance with 2 C.F.R. § 200.332, as well as Subpart F. OSEP also recommends that the State obtain technical assistance from OSEP and OSEP funded technical assistance centers to support the State as it moves from a system that resembles contract oversight to subrecipient monitoring.

made up from a combination of State general funds, IDEA Part C funds, and State special revenue (which up until this point has not been accessed). The bundled rate is distributed to the State's five regional EIS providers on a reimbursement basis and is based on pre-set contractual tiers based on historical child count data. The amount of funding each EIS provider receives from the State is based on the total number of children they serve in a given month which is tied to the pre-set contractual tiers established by the State for each contractor. This amount can vary, and EIS providers can move up and down tiers, but the amount comes out to approximately \$500.00 a month/per child.

In stakeholder interviews with the State's five EIS providers (which are regional) and the State's Inter-agency Coordinating Committee (SICC), participants asserted that the bundled rate was not enough to cover the cost of Part C services. While some EIS providers mentioned that they were able to do private fundraising at the local level to supplement the bundled rate, other EIS providers noted that they did not have any additional sources of income.

The State was transparent in explaining historical issues with the bundled rate and has plans to conduct a rate study to determine the cost of delivering services in the various regions to inform funding structures of the true cost of serving infants, toddlers, and families with disabilities in Montana. In addition, the State also noted that the current billing system under the bundled rate does not provide Montana Milestones sufficient information to determine if the Part C funds are being used in a manner consistent with IDEA Part C and the Uniform Guidance.

The State did not provide evidence of oversight of the implementation of its system of payments policy at the EIS provider level. During interviews with State staff, on-site file reviews, and a review of documents submitted by DPHHS, OSEP was unable to find sufficient documentation or evidence to ensure families had been provided a copy of the State's system of payments or consented for the use of public and/or private insurance in accordance with 34 C.F.R. §§ 303.520, and 303.521. While the State did share copies of IFSPs (printed from MedCompass) that included a check box for families to consent to the use of private insurance, the State was unable to provide any additional documentation associated with the check box. The staff stated that EIS providers can upload information associated with all check boxes in MedCompass, but they could not access the documents during the site visit.

OSEP further verified the inconsistent implementation of the system of payments policy during interviews with stakeholder groups. During those interviews, at least one parent mentioned paying private insurance co-pays, which is inconsistent with the State's system of payments policy that explicitly states families will not be charged fees for co-pays and deductibles. Furthermore, the State was unable to provide sufficient documentation or evidence that they performed adequate oversight of its EIS providers for consistent implementation of its system of payments policy.

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by Montana, and interviews with, Montana Milestones, as the Lead Agency. Based on this analysis, OSEP finds that Montana Milestones:

1. Does not have a general supervision system that includes policies and procedures reasonably designed to monitor its EIS providers to ensure compliance with IDEA Part C fiscal requirements (such as coordination of all available funding sources and payor of last resort), as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b). Specifically, the DPHSS monitoring system is not reasonably designed to identify and verify correction of fiscal noncompliance.

2. Has failed to monitor its EIS providers for compliance as required by 34 C.F.R. § 303.120(a) for the statewide system of payments policy requirements in 34 C.F.R. §§ 303.520, and 303.521.
3. Does not have procedures and practices (such as internal controls to reflect applicable cost principles) that are reasonably designed to ensure the appropriate use of IDEA Part C funds as required under 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200.

As a result, the State is required to implement the following corrective actions to address the two findings of noncompliance identified above.

Required Actions

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

1. Revised fiscal monitoring policies and procedures to ensure that the LA has a system in place to identify and verify the correction of noncompliance (such as coordination of all available funding sources and payor of last resort) as soon as possible and in no case later than one year after the LA's notification of the noncompliance as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b).
2. Revised fiscal monitoring policies that demonstrate how the LA will provide oversight of the State's system of payments as required under 34 C.F.R. §§ 303.120(a), 303.520 and 303.521.
3. Revised fiscal monitoring policies and procedures that demonstrate how the LA will provide oversight of the EIS providers use of IDEA Part C funds (including internal controls) as required under 34 C.F.R. §§ 303.120(a) and 303.205, and the OMB Uniform Guidance in 2 C.F.R. Part 200.

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

1. Evidence of the State's implementation of its fiscal monitoring policies and procedures such as, notification letters, monitoring reports, letters of findings, examples of fiscal finding close-out and verification of correction, or other supporting documentation demonstrating oversight of the State's fiscal monitoring as required under 34 C.F.R. §§ 303.120(a)(1) and (2) and 303.700(a) and (b).
2. Evidence of the State's system of payments practices such as, the process for evaluating the payor source, evidence of training to EIS providers, access to insurance, interim payments, or other supporting documentation demonstrating oversight of the State's system of payments as required under 34 C.F.R. §§ 303.120(a), 303.520 and 303.521. In addition, the State must provide evidence that families have been provided a copy of the State's system of payments policy and have consented, as appropriate, for the use of public and/or private insurance.
3. Evidence of the State's monitoring of its EIS providers use of IDEA Part C funds such as, fiscal monitoring reports, and local EIS provider budgets, and fiscal data system procedures/screenshots, demonstrating the system's capacity for oversight of Federal IDEA Part C funds.

Recommendations

As discussed above, the State LA has undertaken a rate study. OSEP recommends that as part of the rate study, the State should look at whether its bundled rate is contributing to IDEA Part C service delays or waiting lists or has had an impact on how IFSP service decisions are made by the IFSP team, including the frequency, duration and location of services take place. OSEP further recommends that, as the State makes future decisions about its funding system, it ensures that the State LA is able to conduct fiscal monitoring on the use of IDEA funds as well as coordinate all available funds used for IDEA Part C services.

DISPUTE RESOLUTION

Background:

During OSEP's monitoring activities, OSEP and Montana Milestones staff discussed the DMS Dispute Resolution protocol which examines how Montana Milestones implements its general supervisory responsibility, including how dispute resolution is used to identify and correct noncompliance.

OSEP reviewed the State's dispute resolution policies and procedures, dispute resolution manuals, brochures, training materials, and other relevant dispute resolution reports and data provided by the State. OSEP notes that, in accordance with 34 C.F.R. § 303.430(d)(1), the State has adopted the IDEA Part C due process hearing procedures under 34 C.F.R. §§ 303.435 through 303.438 and 303.421(a).

Legal Requirements:

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.

Filing a Complaint

An organization or individual may file a signed written complaint under 34 C.F.R. § 303.434, and the complaint must include—

1. A statement that the LA, public agency, or EIS provider has violated a requirement of IDEA Part C,
2. The facts on which the statement is based,
3. The signature and contact information for the complainant; and
4. If alleging violations with respect to a specific child—
 - a. The name and address of the residence of the child,
 - b. The name of the EIS provider serving the child,
 - c. A description of the nature of the problem of the child, including facts relating to the problem, and
 - d. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
5. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 C.F.R. § 303.432.
6. The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time they file the complaint with the LA.

Qualified Mediators

Under 34 C.F.R. § 303.431(a)(b) the State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of EI services. In addition, the LA must select mediators on a random, rotational, or other impartial basis.

Hearing Officers

At a minimum, under 34 C.F.R. § 303.435 a hearing officer must be impartial and must not -

- A. Be an employee of the LA or the EIS provider that is involved in the provision of EI services or care of the child, and
- B. Have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

The hearing officer must have knowledge about the provisions of IDEA Part C, including EI services available for infants and toddlers with disabilities and their families. The hearing officer must be able to listen to the presentation of relevant viewpoints about the due process complaint, examine all information relevant to the issues, seek to reach a timely resolution of the due process complaint and provide a record of the proceedings, including a written decision. The hearing officer is not an employee of the LA solely because the person is paid by the LA to implement the due process hearing procedures or mediation procedures under Part C.

See Appendix I for explanation and listing of legal requirements.

OSEP Analysis:

OSEP engaged in virtual and on-site discussions with Montana Milestones staff regarding Montana's dispute resolution system including their policies and procedures, program administration, program structure, and program data for dispute resolution. During the discussions, OSEP covered three main topics as it relates to the State's dispute resolution system including: the State's mediation, due process, and State complaint procedures.

OSEP reviewed the State's 618 dispute resolution data and found that the State has not had any mediation or due process hearings filed in the last three years, and only one State complaint filed in 2019. The State complaint in 2019 resulted in a finding of noncompliance that was corrected within one year of identification.

OSEP staff reviewed documents submitted by Montana Milestones and those available on the State's website. The primary documents OSEP reviewed as part of the DMS 2.0 activities included: the Montana Department of Health and Human Services, Developmental Disabilities Program Montana Milestones/Part C Early Intervention Dispute Resolution Handbook (August 2013), Montana Part C Procedural Safeguards (2013), and the Montana Milestones Part C of IDEA Early Intervention Program Understanding the Procedural Safeguards for Families (2018). Montana Milestones' Procedural Safeguards and Dispute Resolution Handbook are provided to parents through its five EIS programs, at the time of the initial evaluation, the initial IFSP meeting, and then referenced every IFSP meeting thereafter.

During the interview with the State, OSEP and the Montana Milestones staff discussed the State's "informal" State complaint process which allows for the submission of a complaint by a parent either in writing or verbally to the Family Support Specialist or the Part C EIS program Manager. OSEP reviewed language³ with the State regarding this informal process outlined in the Montana Milestones/Part C Early Intervention Dispute

³ Language located in: "The Montana Milestones/Part C Early Intervention Dispute Resolution Handbook" (August 2013), pg. 2, and "The Rights and Procedural Safeguards Cont.," pg. 1.

Resolution Handbook (August 2013) and in a document entitled, the “Rights and Procedural Safeguards Cont.” The language in both documents describes the informal State Complaint process, as an opportunity for parties to consent to, and engage in, informal discussions, while exploring solutions to issues raised by the complainant. Nothing in IDEA prevents the State from having an informal complaint resolution system. However, the language embedded in the State’s documents requires that a parent or complainant must engage in the State’s informal process prior to filing a formal State complaint, which is inconsistent with 34 C.F.R. § 303.434.

The Montana Milestones/Part C Early Intervention Dispute Resolution Handbook (August 2013), under the heading, “Informal Complaints,” states that, “If an agreement is not readily achieved, families *are* informed of all procedural safeguards and dispute resolution options for resolution.” Montana’s Procedural Safeguard document, under the heading “Informal Complaints,” specifies that, “If agreement is not readily achieved, parents *should* be informed of all complaint procedural options and that they may use any option to resolve the dispute.” The State reported to OSEP that they do not require the parent to engage in the informal State complaint process, prior to filing a formal state complaint. However, State staff acknowledged that the language described in the document mentioned above implies a requirement that an informal agreement should be pursued before parents can be informed of their right to file a formal complaint.

In addition, Montana’s Procedural Safeguards also requires that individual complaints involving violations of IDEA are to be filed using the State’s informal State complaint mechanism, and the formal state complaint process is reserved only for resolving complaints involving systemic issues. The document states that, “When two or more parties reach an impasse concerning an early intervention service issue, there are two dispute resolution procedures available primarily depending on the type of issue that formed the basis for the complaint.” The first set of procedures is the Individual Child Complaint Procedures for resolving disputes involving decisions regarding identification, evaluations or placement of the child, or the provision of appropriate early intervention services to the child and the child’s family. The other procedure is the State (Formal) Complaint Procedure for resolving disputes involving systemic issues that violate the requirements or regulations of Early Intervention under the Individuals with Disabilities Act of 2004 (IDEA).

During the Phase 2 on-site visit, Montana staff acknowledged the discrepancies found in their policies and procedures and stated that they are in the process of revising the two documents to ensure that they are fully consistent with the IDEA requirements in 34 C.F.R. § 303.434.

Montana Milestones staff also reported that they do not maintain a list of trained mediators as required under 34 C.F.R. § 303.431(a)(2). The State reported that while it does not have a system in place to ensure a list of trained mediators is available, when a request for mediation was made in the past, Montana Milestones utilized a mediator associated with Montana’s Part B program. The Part C Coordinator shared that information about Part C IDEA requirements have been provided on an “as needed” basis, because the Part B mediators are not regularly trained in IDEA Part C requirements.

As reported in Montana’s 618 data, the State has not had any dispute resolution hearings in the last three years. During interviews, Montana Milestones staff, reported that, if the State were to receive a dispute resolution hearing request, the State would rely on the Montana Part B Program to secure a Hearing Officer. The State does not maintain a list of persons who serve as hearing officers for the Part C program. The State does not ensure that hearing officers are knowledgeable about Part C IDEA regulations. Training information is provided to the hearing officer by the Montana Milestones staff once the hearing officer is hired.

Conclusion and Action Required:

OSEP’s analysis is based on the documents and information provided by, and interviews with, staff of Montana Milestones. Based on this analysis, OSEP finds that:

1. Montana Milestones' State complaint policies and procedures are inconsistent with 34 C.F.R. § 303.434(a). Specifically, the documents entitled, "Montana Milestones/Part C Early Intervention Dispute Resolution Handbook (August 2013)" and the "Rights and Procedural Safeguards Cont." indicate that families must engage in an informal process prior to filing a formal State complaint. Further, OSEP finds that Montana's Procedural Safeguards (Procedural Safeguards Cont.) indicate that individual complaints involving violations of IDEA are to be filed using the State's informal State complaint mechanism, and the formal State complaint process is reserved only for resolving complaints involving systemic issues is also inconsistent with 34 C.F.R. § 303.434(a).
2. Montana Milestones' mediation policies and procedures are not consistent with the requirements of IDEA Part C of the Act. In interviews with DPHSS Staff, the State confirmed that it does not maintain a list of trained mediators as required under 34 C.F.R. § 303.431(a)(2). The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
3. The State does not ensure hearing officers possess knowledge of IDEA Part C. Hearing officers must possess knowledge of Part C and the needs of, and EI services available for, infants and toddlers with disabilities and their families, consistent with 34 C.F.R. § 303.435(a).

Required Actions

Within 90 days of the date of this letter the State must submit to OSEP:

1. For State complaints:
 - a. Revised procedural safeguards documents to ensure compliance with Part C requirements regarding complaints, under 34 C.F.R. §303.434(a);
 - b. A copy of the memo sent to all EIS providers explaining the revised complaint procedures; and
 - c. A training schedule for its EIS providers on implementing the revised Montana Milestones complaint procedures.
2. For Qualified Mediators:
 - a. Policies and procedures that detail the State's training activities and assurance that their mediators are knowledgeable on the Part C IDEA regulations relating to the provision of EI services.
 - b. A list of individuals who are qualified mediators in the State and available on a random, rotational, or other impartial basis.
3. For Hearing Officers:
 - a. Policies and procedures that demonstrate that the State trains its hearing officers on IDEA Part C requirements and the EI services available to infants and toddlers with disabilities and their families.
 - b. Policies and procedures that demonstrate that the State ensures its hearing officers listen to the presentation of relevant viewpoints about the due process complaint, will examine all information relevant to the issues, will seek to reach a timely resolution of due process complaints and provide a record of the proceedings, including a written decision to the LA and parties involved in the due process hearing.

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.

Due Process Complaint and Hearing Procedures

Under 34 C.F.R. § 303.430(d)(1), the State must provide a means of filing a due process complaint regarding any matter listed in 34 C.F.R. § 303.421(a). Under 34 C.F.R. § 303.437(b) each LA must ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing required under Part C is completed and a written decision mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the period set out in 34 C.F.R. § 303.437(b) at the request of either party. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of the Act. 34 C.F.R. § 303.438.