



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

March 2, 2023

Manny Diaz, Jr.
Commissioner of Education
Florida Department of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Dear Commissioner Diaz:

This letter responds to the Florida Department of Education's (FDOE) March 17, 2021, October 20, 2021, November 15, 2021, November 16, 2021, January 25, 2022, July 13, 2022, July 25, 2022, and September 16, 2022, submissions to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), following OSEP's December 18, 2020, monitoring letter (letter). OSEP's letter required FDOE to implement corrective actions to address noncompliance with requirements under Part B of the Individuals with Disabilities Education Act (IDEA) as identified through OSEP's differentiated monitoring and support (DMS) activities conducted on-site with FDOE's Bureau of Exceptional Education and Student Services on December 9–11, 2019.

OSEP's letter identified noncompliance with the IDEA Part B requirements in two areas of FDOE's dispute resolution system. Specifically, as reported in OSEP's December 18, 2020, letter, OSEP found that:

A. State Complaint Procedures

1. Absent the complainant's written agreement to withdraw the complaint based on the State's written acceptance of a proposal to resolve the complaint, FDOE's practice of accepting a proposed resolution of the complaint without reviewing all relevant information and making an independent determination as to whether the public agency was violating a requirement of Part B of IDEA or its implementing regulations, was inconsistent with 34 C.F.R. § 300.152(a)(4). Further, under these circumstances, FDOE's practice of not issuing a written decision that addressed each allegation in the complaint and contained findings of fact and conclusions and the reasons for the State Education Agency's final decision, was inconsistent with 34 C.F.R. § 300.152(a)(5); and
2. The FDOE, Bureau of Exceptional Education and Student Services, State Complaints–General Information document; and Filing a State Complaint–Frequently Asked Questions document, are not fully consistent with the requirements in 34 C.F.R. §§ 300.151–300.153.

B. Dispute Resolution Procedures Including Notice of Procedural Safeguards

1. Florida’s Rule 6A-6.03311(4) regarding mediation is inconsistent with 20 U.S.C. § 1415(e)(1) and 34 C.F.R. § 300.506. Specifically, the Rule is inconsistent with IDEA’s provisions that mediation must be available to:
 - a. Resolve any matter arising under Part B of IDEA, including matters arising prior to the filing of a due process complaint; and
 - b. Parties to disputes under Part B of IDEA, which are parents and public agencies, not merely school district personnel.
2. Florida’s Rule 6A-6.03311(5) regarding State complaints is inconsistent with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1) because it does not provide that a complaint may allege that a public agency has violated a requirement of Part B of IDEA or the IDEA Part B regulations.; and
3. Florida’s Part B Notice of Procedural Safeguards for Parents and Students with Disabilities is inconsistent with 20 U.S.C. §1415(d) and 34 C.F.R. § 300.504(c) because it did not include a full explanation of the procedural safeguards available to the parents of a child with a disability.

To address the noncompliance identified, OSEP’s letter required FDOE to implement corrective actions. Specifically, within 90 days of receipt of OSEP’s letter, FDOE was required to provide OSEP with:

A. State Complaint Procedures

- 1.1 A copy of its revised procedures governing its State complaint resolution system to ensure that, unless it receives a written agreement from the complainant withdrawing the complaint:
 - a. When it adopts a district’s or complainant’s proposal to resolve a complaint, the Bureau of Exceptional Education and Student Services reviews all relevant information and makes an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA, or its implementing regulations as required by 34 C.F.R. § 300.152(a)(4); and
 - b. Issues a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for FLDOE’s final decision, as required by 34 C.F.R. § 300.152(a)(5).
- 1.2 Copies of complaint resolutions filed from January 2019 through July 1, 2020, where the State accepted the district’s or complainant’s proposal to resolve the complaint and concluded the complaint resolution without the agreement of the complainant to withdraw the complaint and without complying with the requirements in 34 C.F.R. § 300.152(a)(4) and (5). Documentation for such complaints that the State sought the complainant’s permission to either formally withdraw the complaint or to reopen the complaint and issue a decision in accordance with the requirements in 34 C.F.R. § 300.152(a)(5).

- 1.3 Documentation of the withdrawal of complaints filed after July 1, 2020, if any, where FDOE has accepted the proposal to resolve the complaint, and all complaint resolution decisions of complaints filed after July 1, 2020, if any, in which FDOE has accepted the proposal to resolve the complaint;
- 1.4 A copy of the notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them of the State’s responsibility to comply with all applicable IDEA Part B complaint resolution procedures in 34 C.F.R. §§ 300.151–300.153, including in situations where a school district submits a proposal to resolve the complaint, or the complainant submits a proposed resolution of the problem with regard to a particular child to the extent known and available, and the complainant has not agreed to withdraw the complaint; and
- 1.5 A copy of FDOE’s revised State Complaints–General Information; and Filing a State Complaint–Frequently Asked Questions documents, consistent with the requirements in 34 C.F.R. §§ 300.151–300.153 for OSEP’s review and approval.

B. Dispute Resolution Procedures Including Notice of Procedural Safeguards

- 2.1 A plan to revise the Florida Administrative Code, Rule: 6A-6.03311(4) and (5)—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities, in accordance with OSEP’s conclusions as set forth in its December 20, 2018 letter, to ensure IDEA requirements are addressed with respect to: 1) matters that can be the subject of a mediation; 2) the parties to mediation; and 3), that a State complaint may allege that a public agency, as defined in 34 C.F.R. § 300.33, has violated a requirement of Part B of IDEA or the IDEA Part B regulations.
- 2.2 A written assurance that pending all necessary amendments to the referenced rules, FDOE will ensure that the State and its public agencies implement mediation under 34 C.F.R. § 300.506 and the State complaint procedures in accordance with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1).
- 2.3 A plan to revise its Notice of Procedural Safeguards to include a full explanation of the procedural safeguards available to the parents of a child with a disability, as set forth in 20 U.S.C. § 1415(d) and 34 C.F.R. § 300.504(c).
- 2.4 A copy of a memorandum or other notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that the State will be amending the Florida Administrative Code, Rule: 6A-6.03311(4) and (5)—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities.
- 2.5 A copy of the memorandum or notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that FDOE will be revising its Notice of Procedural Safeguards to be consistent with Part B of IDEA.

On March 17, 2021, October 20, 2021, November 15, 2021, November 16, 2021, January 25, 2022, July 13, 2022, July 25, 2022, and September 16, 2022, FDOE provided OSEP with the corrective actions that it has taken in response to the noncompliance identified in OSEP’s December 18, 2020, letter. Specifically, FDOE submitted:

- Revised IDEA state complaint procedures specific to corrective action 1.1 and 1.1(a) and (b).
- An Excel file containing an overview of complaint resolutions from January 2019 to July 1, 2021, where the State accepted the district’s or complainant’s proposal regarding corrective action 1.2. Subsequently, on January 25, 2022, July 25, 2022, and September 16, 2022, FDOE submitted a plan to OSEP with additional proposed corrective actions specific to corrective action 1.2.
- FDOE’s Paperless Memo notifications that were sent to districts and stakeholders, which were also publicly posted in FDOE’s 2021-36 Weekly Memo, for the week of February 15-19, 2021, specific to corrective actions:
 - 1.4 (regarding the State’s responsibility to comply with all applicable IDEA Part B complaint resolution procedures in 34 C.F.R. §§ 300.151–300.153);
 - 2.4 (regarding amending the Florida Administrative Code, Rule: 6A-6.03311(4) and (5)—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities); and
 - 2.5 (regarding FDOE’s intent to revise its Notice of Procedural Safeguards to be consistent with Part B of IDEA).
- A web link to its revised technical assistance document, State Complaints–General Information and Filing a State Complaint–Frequently Asked Questions related to required action 1.5.
- A web link to the updated Florida Rule 6A-6.03311(4) of the Florida Administrative Code that includes revised language related to: 1) matters that can be the subject of a mediation; (2) parties to mediation; and (3), that a State complaint may allege that a public agency, as defined in 34 C.F.R. § 300.33, has violated a requirement of Part B of IDEA or the IDEA Part B regulations, specific to required action 2.1.
- A written assurance that the State and its public agencies will implement mediation under 34 C.F.R. § 300.506 and the State complaint procedures in accordance with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1), specific to required action 2.2; and
- A plan to adopt the Department’s IDEA Part B Procedural Safeguards Notice model form by July 1, 2021.

Based on OSEP’s review of the supportive documentation and information submitted by FDOE, OSEP has determined that FDOE has taken appropriate steps to address the following corrective actions:

A. State Complaint Procedures

- 1.1 including, 1.1(a) and 1.1(b), related to revising its procedures governing its IDEA Part B State complaint resolution system to be consistent with the requirements under 34 C.F.R. §§ 300.152(a)(4) and 300.152(a)(5).
- 1.2, related to copies of complaint resolutions filed from January 2019 through July 1, 2020, where the State accepted the district’s or complainant’s proposal to resolve the complaint and concluded the complaint resolution without the agreement of the complainant to withdraw the complaint and without complying

with the requirements in 34 C.F.R. § 300.152(a)(4) and (5). Documentation for such complaints that the State sought the complainant’s permission to either formally withdraw the complaint or to reopen the complaint and issue a decision in accordance with the requirements in 34 C.F.R. § 300.152(a)(5).

- 1.3, related to documentation of the withdrawal of complaints filed after July 1, 2020, if any, where FDOE has accepted the proposal to resolve the complaint, and all complaint resolution decisions of complaints filed after July 1, 2020, if any, in which FDOE has accepted the proposal to resolve the complaint.
- 1.4, related to the notification to all LEAs, parent advocacy groups and other interested parties advising them of the State’s responsibility to comply with all applicable IDEA Part B complaint resolution procedures in 34 C.F.R. §§ 300.151–300.153; and
- 1.5, related to FDOE’s technical assistance materials and the revisions of the State Complaints–General Information; and Filing a State Complaint–Frequently Asked Questions documents.

B. Dispute Resolution Procedures Including Notice of Procedural Safeguards

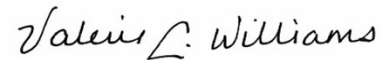
2.1, related to Florida’s Rule 6A-6.03311(4) regarding: (1) matters that can be the subject of a mediation; (2) the parties to mediation; and (3), that a State complaint may allege that a public agency, as defined in 34 C.F.R. § 300.33, has violated a requirement of Part B of IDEA or the IDEA Part B regulations.

2.2, related to FDOE’s written assurance that pending all necessary amendments to the referenced rules, FDOE will ensure that the State and its public agencies implement mediation under 34 C.F.R. § 300.506 and the State complaint procedures in accordance with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1);

- 2.3, related to FDOE’s adoption of the Department’s IDEA Part B Procedural Safeguards Notice model form in place of FDOE’s Notice of Procedural Safeguards to comply with 20 U.S.C. § 1415(d) and 34 C.F.R. § 300.504(c); and
- 2.4 and 2.5, related to FDOE’s notification to all LEAs, parent advocacy groups and other interested parties advising them of the State’s intent to amend the Florida Administrative Code, Rule: 6A-6.03311(4) and (5)—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities and FDOE’s intent to revise its Notice of Procedural Safeguards.

OSEP has determined that FDOE has taken appropriate steps to address the noncompliance identified in OSEP’s December 18, 2020, letter. OSEP appreciates FDOE’s efforts to address the identified noncompliance and complete the required corrective actions. Please contact Dwight Thomas, Education Program Specialist, at 202-245-6238 or Dwight.Thomas@ed.gov if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Valerie C. Williams".

Valerie C. Williams
Director
Office of Special Education Programs

cc: Gregg Corr, Division Director, Monitoring and State Improvement Planning Division, OSEP
Jessica Brattain, Bureau Chief, Exceptional Education and Student Services, FDOE