

DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT

OFFICE OF SPECIAL EDUCATION PROGRAMS
U.S. DEPARTMENT OF EDUCATION

STATE	NEW YORK
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DATE	SEPTEMBER 21, 2023
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IDEA	PART B
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

September 21, 2023

By Email

Honorable Betty A. Rosa
Commissioner
New York State Education Department
89 Washington Avenue
Albany, New York 12234
Email: commissioner@nysed.gov

Dear Commissioner Rosa:

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 the DMS process, States are monitored on their system of general supervision, 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 selects States for monitoring in two ways: 1) DMS 2.0 uses a cyclical process to assign States to cohorts; and 2) OSEP identifies States with emerging issues that require out-of-cycle monitoring. In a letter dated February 10, 2022, OSEP informed the New York State Education Department (NYSED) it was selected for DMS targeted monitoring due to emerging issues related to the State's general supervision system. Specifically, OSEP was concerned about the delays in the first tier of the State's due process hearing system and the identification of underlying noncompliance. During this targeted monitoring visit, OSEP examined the State's policies, procedures, and practices regarding the following monitoring priorities and components of general supervision:

- Monitoring and Improvement
- Dispute Resolution

This DMS targeted monitoring report summarizes OSEP's review of IDEA Part B requirements regarding these monitoring priorities and components. Monitoring activities included discussions and a review of documents regarding the State's process to monitor its local educational agencies (LEAs), identify and correct noncompliance, and make annual local determinations on the performance of each LEA. Discussions also included NYSED's State complaint process and due process hearing oversight. The targeted monitoring activities did not include discussions regarding data or fiscal management as these issues were not the underlying rationale for the targeted monitoring activities.

OSEP conducted six phone interviews with representatives from NYSED Office of Special Education from May 2, 2022, through May 19, 2022. In addition to staff interviews, OSEP reviewed publicly available information, policies, and procedures, and other related documents NYSED submitted to OSEP.

Based on its review of available documents, information, and interviews conducted, OSEP has identified six findings of noncompliance with IDEA requirements at the conclusion of our targeted monitoring activities. OSEP is making the following findings, listed below, and described in more detail further in the focused monitoring report, including any required actions.

OSEP’s review of monitoring and improvement and dispute resolution components did not include an examination of the implementation of the IDEA requirements by all LEAs 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.

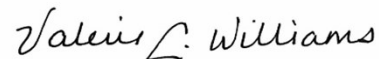
Summary of Focused Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDING SUMMARY
1. Monitoring and Improvement	<p>1.1 OSEP finds that NYSED does not consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA’s compliance with IDEA, including any relevant audit findings, when making annual determinations about the performance of its LEAs.</p> <p>1.2 OSEP finds that NYSED does not have a general supervision system that is reasonably designed to identify and verify correction of noncompliance in a timely manner using its different components, as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p>
2. Dispute Resolution: State Complaints	<p>2.1 OSEP finds that NYSED does not have reasonable procedures to ensure that State complaints held in abeyance pending a due process hearing decision are properly resolved. 34 C.F.R. §§ 300.151 and 300.152(c).</p> <p>2.2 OSEP finds that NYSED does not ensure that State complaints, which allege a violation that occurred not more than one year prior to the date that the complaint is received, are ultimately investigated and resolved as required under 34 C.F.R. § 300.152(c).</p>
3. Dispute Resolution: Due Process Hearings	<p>3.1 OSEP finds that the NYSED does not ensure that public agencies issue timely due process hearing decisions as required in 34 C.F.R. § 300.515.</p>

MONITORING COMPONENT	FINDING SUMMARY
	<p>3.2 OSEP finds that NYSED does not provide adequate written notice to parents regarding the differences in the rights afforded to parents in IDEA due process hearings as compared to the rights afforded to parents who elect to participate in the accelerated review process including the IDEA due process rights that parents forfeit if they participate in the accelerated review process. 34 C.F.R. § 300.504(c).</p> <p>3.3 OSEP finds that NYSED does not have mechanisms in place to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable time set by the State as required under IDEA, as required in 34 C.F.R §§ 300.511 through 300.514, 300.149, and 300.600.</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

cc: Part B State Director

Enclosure:
DMS Monitoring Report
Appendix

MONITORING AND IMPROVEMENT

During OSEP's focused monitoring activities, OSEP and NYSED staff used the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocols to examine how NYSED implements its general supervisory responsibility, including policies and procedures to identify and verify correction of noncompliance and improve educational results and functional outcomes for all children with disabilities. OSEP also discussed NYSED's oversight of its dispute resolution system, including how dispute resolution is used to identify and correct noncompliance.

Legal Requirements:

To effectively monitor the implementation of Part B IDEA 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 B services as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602. Under 34 C.F.R. § 300.600(b), the overall goal is for the State's general supervision system to effectively address:

1. Improving educational results and functional outcomes for children with disabilities;
2. Ensuring that LEAs meet the program requirements of the IDEA, with a particular emphasis on those requirements and data that are most closely related to improving educational results and functional outcomes for children with disabilities; and
3. Ensuring that the State has a system that collects and reports valid and reliable data.¹

States must make annual determinations about the performance of each LEA and enforce Part B requirements consistent with 34 C.F.R. § 300.600(a)(2) and (3). Under 34 C.F.R. § 300.603(b)(1), when making an annual determination about the performance of an LEA, a State must consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with IDEA, including any relevant audit findings. In addition, the State must also make determinations annually about the performance of each LEA using the categories in 34 C.F.R. §§ 300.600(a)(2) and 300.603(b)(1). Furthermore, under 34 C.F.R. § 300.149(a)(2)(iv), the State must ensure that any noncompliance identified through monitoring is corrected as soon as possible but no later than one year after the State identifies the noncompliance.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

During discussions with OSEP, NYSED stated that it fulfills its general supervision responsibilities through a regional system of 16 Special Education Quality Assurance (SEQA) offices that conduct monitoring activities, including the identification and correction of noncompliance, and provide technical assistance. The State identified the components of its general supervision system which include local determinations, LEA self-reviews of State Performance Plan/Annual Performance Report (SPP/APR) compliance indicators, LEA cyclical SPP/APR indicator reporting, dispute resolution, and technical assistance (TA).

¹ 20 U.S.C. §§ 1412(a)(11), 1416(a), 1435(a)(10)(A) and 1442; 34 C.F.R. §§ 300.149, 300.600.

OSEP noted the following deficiencies in the State's practices:

Annual Determinations

When making annual determinations of its LEAs the State does not consider performance on compliance indicators, valid and reliable data, or other data available to the State about the LEA's compliance with IDEA, including any relevant audit findings. NYSED reported that local determinations are an integral part of their monitoring system and are made through the consideration of two data points, performance and compliance, for each LEA. The first consideration is to examine whether an LEA's data performance results in being identified for Targeted Support and Improvement (TSI) or Additional Targeted Support and Improvement (ATSI) under the Every Student Succeeds Act (ESSA).² The State's second consideration is whether an LEA has longstanding noncompliance which is defined by NYSED as findings of noncompliance that remain uncorrected for greater than twelve months.

When making annual LEA determinations based on the considerations listed above, NYSED assigns one of four determination statuses to each LEA: meets requirements, needs assistance, needs intervention, or needs substantial intervention. LEAs with the determination of meets requirements are those LEAs that are not identified as a targeted district under ESSA and that do not have any longstanding noncompliance issues. The determination of needs assistance is assigned to LEAs designated as an ESSA targeted district and/or LEAs identified as having noncompliance that has not been corrected within 12 months but not greater than 24 months. A determination of needs intervention is assigned to LEAs identified as an ESSA targeted district and that have uncorrected noncompliance and the outstanding noncompliance has remained uncorrected for more than 24 months or LEAs that have had the determination of needs assistance or needs intervention for a period of five consecutive years. A determination of needs substantial intervention is only considered for LEAs that have longstanding identified uncorrected noncompliance that results in a denial of a free appropriate public education (FAPE) for students with disabilities. NYSED provided OSEP with a chart titled, New York State IDEA District Determinations for 2020, which included the State's LEA annual determinations for Federal Fiscal Year (FFY) 2020. OSEP's review of this chart showed that of the State's 707 LEAs, 653 were determined to meet requirements, 54 were needs assistance or needs intervention, and no LEAs were determined to need substantial intervention.

Analysis of the FFY 2020 data indicates that the majority of the State's annual LEA determinations are based only on an LEA's ESSA targeted district status. Of the 54 LEAs identified as needs assistance or needs intervention, four LEAs were reported as having longstanding noncompliance. IDEA requires States to make an annual determination of the extent to which each LEA meets the requirements and purposes of IDEA based on the information in the SPP/APR, information obtained through monitoring visits, and any other publicly available information. 34 C.F.R. §§ 300.603(b).

NYSED also submitted the New York State Education Department 2020 Criteria for School District Determinations under IDEA document which states that determinations are made using the following considerations, "...information obtained through monitoring visits, other public information made available, including any audit findings, and whether the data submitted by the district is valid, reliable, and timely." NYSED did not, however, provide evidence to show that their annual determinations had been based on any criteria beyond the ESSA targeted district performance or a status of longstanding noncompliance.

² The term targeted district is explained on the [NYSED 2022 Criteria for School District Determinations under the IDEA](#) document to be a District [that] has one or more schools with the students with disabilities subgroup identified for TSI or ATSI under ESSA.

NYSED utilizes a self-review process for all LEAs to annually report data related to SPP/APR Part B Indicators B-4, B-9, and B-10³. Data reporting of SPP/APR Part B Indicators B-7, B-8, B-11, B-12, B-13, and B-14⁴ is done by LEAs on a 6-year cycle by reporting one indicator a year for SPP/APR Part B Indicators B-7, B-8, B-11, and B-12; SPP/APR Part B Indicators B-13 and B-14 are reported on in the same year for 5 cycles with one cycle of no reporting. NYSED requires New York City Public Schools (NYCPS) to report on all indicators annually.

The State's monitoring process limits the scope of their general supervision activities to only the IDEA requirements included in the State's annual SPP/APR submission (i.e., the SPP/APR indicators and data reported to the Department under IDEA Sections 616 and 642). In addition, those LEAs that do not self-report noncompliance through the self-review process would only be reporting on one cyclical data indicator. The limited data considerations in NYSED's determination process restrict the number of LEAs identified for general supervision activities within the State because NYSED would not consider LEAs with an annual determination of meets requirements for monitoring activities. Therefore, LEAs with an annual determination of meet requirements, whose determination criteria is limited only to an LEA's ESSA targeted District status and whether there is any longstanding noncompliance, are not being monitored consistent with 34 C.F.R. § 300.600. Specifically, LEAs with an annual determination of meet requirements are not being included in general supervision activities outside of the review of SPP/APR indicator data.

Standard for making Local Determinations: Under 34 C.F.R. § 300.600(a) States must make an annual determination for each LEA. Under 34 C.F.R. § 300.603(b)(1), when making an annual determination about the performance of an LEA, a State must consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with IDEA, including any relevant audit findings. In addition, the State must also make annual determinations about the performance of each LEA using the categories in 34 C.F.R. §§ 300.600 (a)(2) and 300.603(b)(1). Under 34 C.F.R. § 300.600(a)(2) States must make annual determinations consistent with 34 C.F.R. § 300.603(b)(1) based on the State's annual performance report, information obtained through monitoring visits, and any other public information made available. In making its annual IDEA determinations, NYSED only considers the performance of students with disabilities submitted by LEAs as part of ESSA annual reporting requirements and whether there is any longstanding noncompliance in the LEA. The State's use of the singular data point identifying an ESSA targeted district or longstanding noncompliance in the annual determination process does not take into consideration such quantifiable and qualitative indicators to measure performance in priority areas

³ Indicator 4A: Percent of LEAs that have a significant discrepancy in the rate of suspensions and expulsions of greater than 10 days in a school year for children with Individualized Education Plans (IEPs), Indicator 4B: Percent of LEAs that have: (a) a significant discrepancy by race or ethnicity, in the rate of suspensions and expulsions of greater than 10 days in a school year for children with IEPs; and (b) policies, procedures or practices that contribute to the significant discrepancy; Indicator 9: Percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification; Indicator 10: Percent of districts with disproportionate representation of racial and ethnic groups in specific disability categories that is the result of inappropriate identification.

⁴ Indicator 7: Percent of preschool children aged 3 through 5 with IEPs who demonstrate improved; positive social-emotional skills, acquisition and use of knowledge and skills, and use of appropriate behaviors to meet their needs; Indicator 8: Percent of parents with a child receiving special education services who report that schools facilitated parent involvement as a means of improving services and results for children with disabilities; Indicator 11: Percent of children who were evaluated within 60 days of receiving parental consent for initial evaluation or the State established a timeframe; Indicator 12: Percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays; Indicator 13: Percent of youth with IEPs aged 16 and above with an IEP that includes appropriate measurable postsecondary goals; Indicator 14: Percent of youth who are no longer in secondary school, had IEPs in effect at the time they left school, and were enrolled in higher education, competitively employed, or in some other postsecondary education or training program within one year of leaving high school.

specific to performance on compliance indicators, valid and reliable data, and other data available with respect to an LEA's compliance to include relevant audit findings.

Identification of Noncompliance

The State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner and ensure correction of noncompliance. OSEP reviewed State submitted documents, and NYSED confirmed in interviews how the annual IDEA determination activities are used to identify noncompliance. LEAs identified as needs assistance or needs intervention take part in a series of on-site activities to address performance of students with disabilities or long-standing noncompliance by SEQA staff. These staff conduct a root cause analysis to develop a support plan for professional development activities to address systemic concerns within the LEA. Once the support plan is developed, one or more of the State's Coordinated Intervention District Modules⁵ are selected by staff for implementation within the support plan. NYSED reported the support plan activities are facilitated by SEQA staff over a 6-to-8-month period. The activities outlined in the NYSED document, Policy and Procedures on NA and NI Districts, describe the process of data review, use of the modules to assess implementation understanding, and the option of review of redacted student records, classroom visits, or interviews that are completed prior to the issuance of the "School District: Announcement," letter. This letter is issued at the conclusion of targeted technical assistance in areas of concern and is described as "formally initiating the activities necessary to determine compliance and noncompliance." OSEP's review of documents submitted by NYSED provided additional evidence of LEAs engaging in professional development (PD) or TA prior to formal monitoring activities. NYSED staff reported that if noncompliance is discovered by SEQA staff during the implementation of the support plan the noncompliance is reported to monitoring staff for review, and it is then left to monitoring staff to determine if a finding is made.

OSEP commends NYSED on the activities that SEQA staff engage in when working with LEAs identified through the annual determination process. OSEP notes, however, that the primary focus of these activities is TA. Although there is follow-up around concerns identified in the LEA's root cause analysis, including the development of a support plan, implementation of a focused module, and review of redacted student files, these activities do not result in the identification of systemic or individual noncompliance.

Standard for Identifying Noncompliance: In order to effectively monitor the implementation of Part B of the IDEA, as required by 34 C.F.R. §§ 300.149 and 300.600, the State must monitor the improvement of educational results and functional outcomes for all children with disabilities, and must ensure compliance with the IDEA, Part B requirements. If, through its due diligence, the State determines that the LEA is out of compliance with an applicable IDEA requirement, the State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA. This finding must be timely issued, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time, that the LEA has violated an IDEA requirement, unless the LEA immediately (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction.

Based on the information provided, OSEP has determined that NYSED does not identify noncompliance in a timely manner by issuing findings of noncompliance when the State obtains credible information reflecting noncompliance with Part B requirements, specifically 34 C.F.R. §§ 300.149 and 300.600. NYSED does not issue findings of noncompliance when SEQA staff are conducting root cause analysis, implementing a focused module activity, or reviewing redacted student records. Because the State does not have a process in place to

⁵ Module titles: CSE Process and IEP Development, Least Restrictive Environment, Functional Behavior Assessments and Behavioral Intervention Plans, Committee on Special Education, Individualized education program (IEP) development, IEP Implementation, Evaluation/Reevaluation, Transition, Suspension Alternative Instruction, Time Out-Emergency Interventions.

identify noncompliance, OSEP is unable to verify the State's process for ensuring correction of noncompliance as soon as possible, but no later than one year after the State's written notification of noncompliance, codified in the IDEA regulations in 34 C.F.R. §§ 300.600(e).

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by the State, and interviews with State staff. Based on this analysis, OSEP finds that:

- 1.1 The State does not consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with IDEA, including any relevant audit findings, when making annual determinations about the performance of its LEAs as required under 34 C.F.R. §§ 300.600(a) and 300.603(b)(1).
- 1.2 The State does not have a general supervision system that is reasonably designed to identify and verify correction of noncompliance in a timely manner using its different components, as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.

Required Actions

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

1. Updated policies and procedures for issuing annual IDEA determinations. These procedures must include the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA's compliance with the IDEA, including relevant audit findings.
2. Updated policies and procedures, documenting its process for identifying and verifying correction of noncompliance in a timely manner.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this monitoring report the State must submit to OSEP:

1. The State's IDEA annual LEA determinations with any underlying protocols or rubrics that were used in completing the determinations.
2. Evidence of implementation of the State's revised monitoring policies and procedures such as, notification letters, tools to conduct the monitoring, monitoring reports, letters of findings, root cause analysis, technical assistance, examples of finding close-out and verification of correction, or other supporting documentation.

Recommendations

As described above, IDEA requires States to make an annual determination of the extent to which each LEA meets the requirements and purposes of IDEA based on the information in the SPP/APR, information obtained through monitoring visits, and any other publicly available information. 34 C.F.R. § 300.603(b). Under 34 C.F.R. § 300.604, the State is then required to take certain enforcement action(s) if an LEA needs assistance for two consecutive years, needs intervention for three or more consecutive years, or at any time the State determines that an LEA needs substantial intervention or that there is a substantial failure to comply with any Part B eligibility condition. Under 34 C.F.R. § 300.600(a)(3), the State must enforce Part B of the IDEA, consistent with 34 C.F.R. § 300.604, using appropriate enforcement mechanisms, which must include, if

applicable, the enforcement mechanisms identified in 34 C.F.R. §§ 300.604(a)(1) (TA), 300.604(a)(3) (conditions on funding of an LEA), 300.604(b)(2)(v) (withholding funds, in whole or in part, by the SEA), and 300.604(c)(2) (withholding funds, in whole or in part, by the SEA). If an LEA is found to have noncompliance, NYSED develops a Compliance Assurance Plan (CAP), which includes the NYCPS CAP. If the school district is not able to demonstrate resolution of noncompliance by the prescribed due dates in the CAP, a Notice of Outstanding Noncompliance letter is sent to the school district and, unless an extension is granted based on evidence that the school district is reasonably close to completing the required corrective action, SEQA will develop an Action Plan to Resolve Outstanding Noncompliance (APRON) with the school district. If an APRON is developed, SEQA meets with the school district to review the APRON and the revised due date(s). While NYSED has placed LEAs with long-standing noncompliance on CAPs and APRONs, OSEP recommends that the State consider pursuing additional enforcement mechanisms it may have available under State law, including those appropriate enforcement mechanisms available in 34 C.F.R. § 300.604.

DISPUTE RESOLUTION: STATE COMPLAINTS

During OSEP's focused monitoring activities, OSEP and NYSED staff used the DMS Dispute Resolution protocols to examine how NYSED implements its general supervisory responsibility including how dispute resolution is used to identify and correct noncompliance, its State complaint system, and due process system.

Legal Requirements:

Under 34 C.F.R. § 300.151, each SEA 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. § 300.153. Under 34 C.F.R. § 300.153(c), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. If a written complaint is received that is also the subject of a due process hearing under 34 C.F.R §§ 300.507, or 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 34 C.F.R. §§ 300.152(a) and 300.152(b). 34 C.F.R. § 300.152(c)(1). Further, if an issue raised in the State complaint is not resolved by the due process hearing decision, the State must resolve that issue through the State complaint process.

OSEP Analysis:

During the DMS monitoring activities OSEP discussed with the State NYSED's State complaint procedures. OSEP also reviewed documents NYSED submitted including NYSED's Complaint Investigator's Manual, its State Complaint Procedures Questions and Answers, and examples of State complaint decisions.

OSEP noted the following deficiencies in the State's practices:

State complaints that have been set aside because they are also the subject of pending due process hearings, are not being tracked to ensure resolution. NYSED's Complaint Investigator's Manual requires an investigator to set aside an issue in a State Complaint when it is determined that the allegation in a State Complaint is the subject of a pending or ongoing impartial hearing. NYSED staff reported that when an issue is set aside, it means that NYSED will not investigate that issue until a decision has been rendered by an impartial hearing officer and the complainant submits a request to reactivate the complaint at the end of the hearing because the issue was not resolved. The request to reactivate the complaint must include evidence that the issue was not addressed by the impartial hearing. When asked about this process during DMS interviews, NYSED staff confirmed that it is the responsibility of the parent or party who filed the State complaint to ensure that State complaint is resolved following the conclusion of the due process hearing. The State also confirmed that it does not have a mechanism in place to track whether State complaints that are set aside are ultimately resolved, if necessary.

NYSED's current policies and procedures appear to shift the burden of ensuring State complaints are investigated to the complainant. This policy is inconsistent with 34 C.F.R. § 300.151 which requires the SEA to ensure State complaints are investigated and resolved. Therefore, the State must have procedures in place to ensure that State complaints set aside under 34 C.F.R. § 300.152(c), but not resolved through the IDEA due process procedures, are ultimately investigated and resolved by the SEA.

State complaints that were timely filed and set aside because they are also the subject of pending due process hearings are not being investigated or resolved, because they are now beyond the statute of limitations.

NYSED's Complaint Investigator's Manual states that for sufficiency purposes, the violations alleged in the complaint must have occurred within 12 months from the date the complaint was initially filed. If a written

request is received to reinstate the State complaint after the impartial hearing decision is rendered, it will not be investigated if the alleged violation occurred beyond the 12-month mark. During discussions with OSEP, NYSED confirmed that State complaints initially filed within the statute of limitations and held in abeyance because of a pending due process hearing, will not be investigated if the one-year statute of limitations expires while the due process hearing is pending.

Under 34 C.F.R. § 300.151, States must resolve any complaint that meets the requirements of 34 C.F.R. § 300.153(c), which includes the one-year statute of limitations. While the State must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing, the party is not required to refile the State complaint. 34 C.F.R. § 300.152(c). NYSED's procedures, however, do not hold the pending matters in abeyance, but instead require the parent to refile the complaint once the due process hearing is complete. This practice allows complaints that were initially timely filed under 34 C.F.R. § 300.153(c) to be dismissed as untimely and not investigated and resolved. Such a practice is particularly concerning given the significant delays in resolving due process hearings in New York City. The State, therefore, must have policies in place to ensure that complaints that were timely filed and set aside under 34 C.F.R. § 300.152(c), are ultimately investigated if the due process hearings do not resolve the matters pending in the State complaints.

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by the State, and interviews with State staff. Based on this analysis, OSEP finds that:

- 2.1 NYSED does not have reasonable procedures in place to ensure that State complaints held in abeyance pending a due process hearing decision are properly resolved under 34 C.F.R. §§ 300.151 and 300.152(c). The practice of requiring parents to raise the unresolved issue with the State is inconsistent with the requirements in 34 C.F.R. § 300.152(c), as the State must have procedures in place to ensure that State complaints that are set aside are ultimately resolved, if the issues were not resolved in the due process hearing.
- 2.2 NYSED does not ensure that State complaints, which allege a violation that occurred not more than one year prior to the date that the complaint is received, are ultimately investigated and resolved as required under 34 C.F.R. § 300.152(c). The State's practice of not investigating timely State complaints that have been set aside because of a pending due process hearing on the basis that the statute of limitations had expired during the pending due process hearing is inconsistent with IDEA.

Required Actions

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

1. Updated policies and procedures documenting the State's process to resolve any issues in a State complaint the State set aside under 34 C.F.R. § 300.152(c) because they had also been raised in a due process hearing request but were not ultimately addressed in the final due process hearing decision. Specifically, the revised policies and procedures must:
 - a. Accurately reflect the SEA's obligation to ensure that State complaints held in abeyance pending a due process hearing decision are properly resolved under 34 C.F.R. §§ 300.151 and 300.152(c); and
 - b. Ensure that State complaints, which allege a violation that occurred not more than one year prior to the date that the complaint is received, are ultimately investigated and resolved as required under 34 C.F.R. § 300.152(c), regardless of when the pending due process hearing decision is issued.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this monitoring report the State must submit to OSEP:

1. Evidence that reflects the revised procedures for all State complaints received after the date of this letter in which a due process hearing has also been requested, including a copy of the notification 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 through 300.153, including the State complaint set aside provisions;
2. Documentation demonstrating the mechanism used by the State to track the resolution of State complaints that are set aside because of pending due process hearings.
3. Documentation of State complaints filed from school year 2021-2022 to the date of this letter that were set aside because the issue also was raised in a due process hearing request. NYSED must determine whether those State complaints were properly resolved.
4. Documentation for set aside State complaints that were filed from school year 2021-2022 to the date of this letter and were not properly resolved, which shows that NYSED retroactively 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. §§ 300.151 and 300.152(c).

DISPUTE RESOLUTION: DUE PROCESS HEARINGS

During OSEP's focused monitoring activities, OSEP and NYSED staff used the DMS Dispute Resolution protocols to examine how NYSED implements its dispute resolution procedures, including State complaints, mediation, and due process procedures.

Legal Requirements:

Under 34 C.F.R. § 300.515(a), the public agency must ensure that not later than 45 days after the expiration of the 30-day resolution period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), a final decision is reached in the hearing; and a copy of the decision is mailed to the parties, unless, under C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of either party. 34 C.F.R. § 300.504(c) requires States to include a full explanation of all the procedural safeguards available under the cited provisions in the Procedural Safeguards Notice (PSN). This includes information about filing and timelines for resolving due process complaints and hearings, all hearing rights afforded to the parties, what issues may be raised at a hearing, and other relevant timelines and procedures. Under IDEA 34 C.F.R. §§ 300.511 through 300.514, due process hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State. The SEA, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis:

During the DMS monitoring activities OSEP discussed with the State, NYSED's due process hearing procedures. OSEP also reviewed documents NYSED submitted including NYSED's Complaint Investigator's Manual, its State Complaint Procedures Questions and Answers, and examples of State complaint decisions.

OSEP noted the following deficiencies in the State's practices:

Due process hearing requests are not being timely adjudicated in accordance with IDEA due process timelines and procedures. During the past three years, the State has reported a significant increase in pending due process hearing requests at the first-tier level, the majority of which are filed against NYCPS. Specifically, NYSED reported to OSEP the following Statewide school-year 2021-2022 data, as of May 2023:

- 18,200 new hearings filed in 2021-22
- 1,977 hearings fully adjudicated
 - 127 hearings adjudicated within timelines
- 5,777 due process complaints withdrawn or dismissed (including resolved without a hearing).
- 10,446 pending due process complaints from school year 2020-2021 that have not been resolved within the required timelines.

The State's data show an increase in the number of both total hearing requests filed and pending hearing requests. During the DMS interviews NYSED also noted that the number of late cases may not be accurate due to the lag in NYCPS entering extension orders into their data system. At the time of OSEP's DMS activities the State reported the projected data entry lag in NYCPS was 65+ days. In March 2023, NYSED also reported that

in the rest of the State, there were 206 open due process cases. NYSED reported that many of the late cases, outside of NYCPS, are due to data entry issues on the part of the LEAs which NYSED is working to resolve.

NYSED also described the activities it has undertaken to address the backlog of due process hearings. In May 2019, the State placed NYCPS on a CAP to address longstanding noncompliance including, among other issues, compliance with the requirement for timely due process hearing decisions. NYSED also discussed its efforts to continue hiring new cohorts of hearings officers as well as ensuring that virtual due process hearings are made available to parents. Finally, NYSED provided an update on the transition of NYCPS's impartial hearing system to the Office of Administrative Trials and Hearings, which will establish a separate Special Education Unit.

In addition to the CAP, the State legislature adopted accelerated alternative dispute resolution provisions under New York State Legislature, Chapter 812 of the Laws of 2021 (Chapter 812) and Title 8 of the Codes, Rules and Regulations of the State of New York (8 CRR-NY 200.5). Chapter 812, effective March 22, 2022, amends Education Law § 4404 to permit the immediate appointment of an independent hearing officer (IHO) to address requests for relief from due process complaints that have been on the waitlist for 196 days. Under this process, only available in New York City, the accelerated review is conducted in place of the IDEA due process hearing and is completed within 21 business days of receipt of a parent's request for accelerated review.⁶ The IHO can issue an order based on a proposed order of relief submitted by the parent identifying appropriate and individualized programs and services for the student. Under this process, the IHO issues the final determination for the accelerated review in the form of:

- (a) the order of relief proposed by the parents;
- (b) the order of relief proposed by the parents as modified by the IHO based solely upon the written record; or
- (c) a finding and conclusion that no relief is warranted based solely on the written record.

The parties may appeal any such determination to the Office of State Review within the timelines outlined in 8 CRR-NY 200.5(k), except parents cannot appeal a final determination where the IHO has ordered the relief proposed by the parents. Currently, NYSED has drafted a proposed separate notice, an Accelerated Review Parent Notification (ARPN), that only explains the rights under an accelerated review.

⁶ Under 8 CRR-NY 205(o)(3), the accelerated process is conducted in accordance with the following schedule:

- (1) Within one business day of receipt of a parent's request for accelerated review, an impartial hearing officer shall be appointed to conduct the accelerated review.
- (2) Within two business days of appointment, the impartial hearing officer shall notify the parties via email of the schedule for the electronic submission by the parent of a proposed order of relief and supporting written documentation pursuant to this section; such documentation may include affidavits, affirmations, and/or declarations as well as exhibits.
- (3) The schedule must require completion of the parent's submission of all documentation via email to the impartial hearing officer and to the district's representative no later than 10 business days after the date of the impartial hearing officer's notification pursuant section 200(o)(3)(ii).
- (4) Within two business days after receipt of the parents' electronic submission, the school district may file objections to the proposed relief and any supporting written documentation submitted by the parents, together with a proffer of any documentation it wishes to be permitted to enter into the record for review by the impartial hearing officer. The district's objections and any supporting documentation must be submitted via email to the impartial hearing officer and the parent.
- (5) Within two business days after receipt of the school district's objections to the proposed relief, if any, the parent may submit a written response via email to the impartial hearing officer and to the district's representative.
- (6) Within two business days after receipt of the parent's response, if any, or two business days after receipt of the parents' proposed order and evidence, if no objections and supporting documentation are submitted, the impartial hearing officer shall determine what documents are to be admitted and shall certify the record that forms the basis for the order of relief or finding.
- (7) Within two business days after certification of the record, the impartial hearing officer shall issue a final determination.

It is important to note that the due process hearing rights of the parties required by IDEA Part B are not the same for the accelerated review. For example, the accelerated review is conducted exclusively on the written record so the parties do not have the opportunity to present, confront, cross-examine, and compel the attendance of witnesses as provided in 34 C.F.R. § 300.512(a)(2). Currently, NYSED's PSN outlines complainants' rights with respect to due process hearings, however, it does not include any discussion of New York City's accelerated review process nor the rights that parents would forfeit if they elect to participate in that process. Given that both the due process hearings and the accelerated reviews are conducted by IHOs and that there are significant and substantial differences in the rights afforded to parents under the two procedures, in March 2023, OSEP reviewed NYSED's proposed separate notice, an Accelerated Review Parent Notification (ARPN). While the ARPN describes the rights under the accelerated review process, it does not discuss the IDEA due process hearing rights that parents would forfeit if they elect to use the accelerated review process. Unlike the PSN, it also was unclear under what circumstances parents would be provided such notice.

Written notice regarding the differences between the IDEA due process hearing rights and the rights under the accelerated review process, including the hearing rights that are forfeited, must be provided to parents through the PSN. Even though the accelerated review process is specific to New York City, the provision was enacted by the State and NYSED has general supervisory responsibilities to ensure that each school district provides adequate notice to parents. OSEP concludes that NYSED has not ensured that parents of students in NYCPS are provided with adequate written notice explaining the differences between the rights under an IDEA due process hearing procedures and the accelerated review process, including those IDEA hearing rights that are forfeited when a parent elects to use the latter.

The State believes that the accelerated review process will put pressure on NYCPS to provide FAPE and resolve complaints in a timely manner.⁷ While the accelerated review provisions correlate with improvements in the number of hearing officers assigned to due process hearings, as noted, it is unclear when the final findings and decisions are issued or whether the increase in assigning hearing officers has increased timely resolution consistent with 34 C.F.R. § 300.515. In addition to improving its monitoring of the timeliness of due process hearings and decisions, NYSED should continue to review and address hearing officer capacity. Moreover, OSEP believes that the best way to address this is to ensure that NYSED ensures the correction of any underlying systemic noncompliance that may be leading to the significant number of hearings.

The State is not ensuring that the hearing officers' decisions are being implemented in a timely manner. OSEP and NYSED also discussed the oversight of the implementation of the final due process hearing officers' decisions. NYSED stated that it does not have a formal mechanism in place to ensure that hearing decisions are implemented in a timely manner. The State reported that it delegates this responsibility to the LEAs, as the first tier of the State's due process system. NYSED noted that it may hear from a parent if the hearing decision was not implemented and that if the State becomes aware that a hearing decision has not been implemented, NYSED staff will follow up with the LEA to address the issue, as appropriate.

Finally, OSEP notes that parents have filed a class action complaint against NYCPS, *J.S.M. v. New York City Department of Education, et. al.*, in the U.S. District Court for the Eastern District of New York, alleging delays in due process hearings and demanding declaratory and injunctive relief. Summary judgment motions have been filed, and the parties are awaiting a ruling while participating in settlement discussions. OSEP will monitor the progress of that case, including any relief ordered by the court or agreed to by the parties.

⁷ As of March 2023, NYSED reported that only one parent chose to utilize the process.

Area of Concern – Equitable Services

Following the monitoring activities, OSEP and NYSED have continued to discuss the backlog of due process hearings in NYCPS. During subsequent conversations, OSEP inquired about the large percentage of due process hearings in NYCPS that address equitable services. Under 34 C.F.R. § 300.140(b), a parent who has enrolled his or her child in a private school has the right to file a due process complaint to request a due process hearing regarding the child find requirements in 34 C.F.R. § 300.131, including the requirements in 34 C.F.R. §§ 300.300 through 300.311. The due process provisions in Section 615 of the IDEA and 34 C.F.R. §§ 300.504 through 300.519 do not apply to issues regarding the provision of services to any parentally-placed private school child with a disability. 34 C.F.R. § 300.140(a). However, New York State law provides for additional services for parentally-placed private school children with disabilities that go beyond the equitable service provisions included in IDEA.⁸ These services are provided through an individualized education services program (IESP). In addition, New York also attaches due process rights to IESPs because children have an individual right to State equitable services which is an additional protection not included in IDEA. See Ed. L. § 3602-c (2)(a) and (b) and (7) (as amended by Chapter 378 of the Laws of 2007). Therefore, many of the due process hearings in NYCPS are brought under State law rather than IDEA.

Given the number of due process hearings related to equitable services, OSEP also inquired about how NYCPS is implementing the IDEA consultation requirements. Under 34 C.F.R. § 300.134, each LEA (or, if appropriate, an SEA) must consult in a timely and meaningful way with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for parentally-placed private school children. NYSED was not able to describe how consultation required under 34 C.F.R. § 300.134 is being carried out in New York City but acknowledged that ensuring consultation occurred could lead to a decrease in due process hearings. Given the current backlog of all due process hearings in New York City, OSEP is concerned about the use of the same resources to adjudicate hearings that are brought under State law as well as those filed under IDEA.

Conclusion and Action Required:

OSEP's analysis is based on the documents and information provided by the State, and interviews with State staff. Based on this analysis, OSEP finds that:

- 3.1 NYSED does not ensure that public agencies issue timely due process hearing decisions as required in 34 C.F.R. § 300.515. Over 50% of the open cases against the NYCPS are beyond the 45-day or properly extended timeline for the issuance of a decision. In addition, NYCPS continues to receive over 10,000 new due process hearings each year which compounds this backlog.
- 3.2 NYSED, as required under 34 C.F.R. § 300.504(c), does not ensure adequate written notice to parents regarding the differences in the rights for IDEA due process hearings as compared to the rights afforded to parents who elect to participate in the accelerated review process including the IDEA due process rights that parents forfeit if they participate in the accelerated review process.
- 3.3 NYSED does not have mechanisms in place to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the

⁸ Section 3602-c, as amended by Chapter 378 of the Laws of 2007, establishes New York State's requirements relating to the provision of special education to students with disabilities enrolled in nonpublic elementary and secondary schools by their parents. Under the provisions of section 3602-c, students with disabilities placed by their parents in nonpublic schools are entitled to receive special education services in accordance with an individualized education services program from the public school district in which the nonpublic school is located while they receive general education from the nonpublic school where their parents enrolled them.

hearing officer, within a reasonable time set by the State as required under 34 C.F.R §§ 300.511 through 300.514, 300.149, and 300.600. NYSED, as the SEA, is ultimately responsible for ensuring hearing officer decisions are implemented in a timely manner and must have a mechanism in place to track the implementation of these decisions.

Required Actions

Policies, Procedures and Practices—within 90 days of the date of this monitoring report the State must submit to OSEP:

1. Quarterly dispute resolution data from NYCPS, which will be publicly reported, and include:
 - a. The total number of pending due process hearings in NYCPS.
 - b. Of the total provided in (a), the current number of pending due process hearings that are overdue.
 - c. Of the total provided in (a), the number of new hearing requests received within the last reporting period.
 - d. Of the total provided in (a), the number of hearing requests received that have not been assigned a hearing officer.
 - e. Of the total provided in (a), the number of hearing requests filed under State law rather than IDEA.
 - f. The number of due process hearing requests resolved by NYCPS during the most recent reporting period. Please provide the number of hearing requests resolved through mediation, resolution meeting, settlement agreements, withdrawals, dismissals, and hearing officer decisions.
 - g. Of the total provided in (e), the number of hearing requests resolved within the required timelines.
 - h. Of the total provided in (e), the number of hearing requests resolved within extended timelines.
 - i. The range of days the due process hearing requests that have not been resolved in a timely manner are overdue.
 - j. For due process hearing requests that were not resolved in a timely manner, provide:
 - i. The reasons for the delay (e.g., hearing officer assignment, pendency request, etc.); and
 - ii. The number of due process hearing requests that are overdue for each reason identified.
2. Ensure that the PSN provided to parents of children in NYCPS includes a description of the differences between the rights under the accelerated review process and the IDEA due process hearing rights and those hearing rights that parents would forfeit if they participate in the accelerated review process.
3. Revised policies and procedures which demonstrate that the State has a mechanism to:
 - a. Track the implementation of the due process hearing decisions; and
 - b. Monitor LEAs to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State in accordance with the requirements in 34 C.F.R. §§ 300.511 through 300.514, 300.149, and 300.600.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this monitoring report the State must submit to OSEP:

1. Evidence of the State's tracking mechanism and monitoring activities which ensure due process hearing decisions are being implemented in a timely manner.

2. Evidence that the PSN for NYCPS includes a full explanation of the differences between a due process hearing and an accelerated review process, including those hearing rights that parents would forfeit.

Recommendations

NYSED should consider additional actions to ensure that NYCPS is implementing the consultation requirements in 34 C.F.R. § 300.134, including additional technical assistance and focused monitoring.

APPENDIX

Monitoring and Improvement Legal Requirements

In order to effectively monitor the implementation of Part B 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. § 300.149.
2. Its monitoring responsibilities in 34 C.F.R. §§ 300.600 through 300.602, and
3. Its responsibility to annually report on performance of the State and of each LEA, as provided in 34 C.F.R. § 300.602(b)(1)(i)(A) and (b)(2).

A State's monitoring responsibilities include monitoring its LEAs' compliance with the requirements of IDEA Part B underlying the SPP/APR indicators, to ensure that the SEA can effectively carry out its general supervision responsibility under IDEA Part B, consistent with 34 C.F.R. § 300.149(a).

Under 34 C.F.R. § 300.600(b), the State's monitoring activities must primarily focus on:

1. Improving educational results and functional outcomes for all children with disabilities, and
2. Ensuring that public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 300.600(d), the State also must ensure that when it identifies noncompliance with IDEA Part B requirements by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

34 C.F.R. § 300.600(e).

Further, under 34 C.F.R. § 300.149(b), the State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 C.F.R. §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

In addition, under 34 C.F.R. § 300.600(a)(1), the State must monitor the implementation of IDEA Part B, and under 34 C.F.R. § 300.600(a)(4) must report annually on the performance of the State and each LEA on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the State must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 300.600(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 300.600(c). Each State also must use the targets established in the State's performance plan under 34 C.F.R. § 300.601 and the priority areas described in 34 C.F.R. § 300.600(d) to analyze the performance of each LEA. 34 C.F.R. § 300.602.

Data Legal Requirements

To meet the data reporting requirements of IDEA sections 616 and 618 and 34 C.F.R. §§ 300.601(b) and 300.640 through 300.646, 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 the IDEA and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), State educational agencies (SEAs) are responsible for oversight of the operations of IDEA-supported activities. Each SEA must monitor its own activities, and those of its LEAs, to ensure compliance with applicable Federal requirements and that performance expectations are being achieved. Specifically, the SEA must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes required information at the time of the subaward. 2 C.F.R. § 200.332(a). The SEA also must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring. 2 C.F.R. § 200.332(b). The monitoring activities must ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. 2 C.F.R. § 200.332(d); also see 34 C.F.R. §§ 300.149 and 300.600. In addition, the SEA must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, for the purposes of determining the appropriate subrecipient monitoring. 2 C.F.R. § 200.332(b). The SEA's monitoring activities also must verify that every subrecipient is audited in accordance with the Uniform Guidance and must consider enforcement actions against noncompliant subrecipients as required under the Uniform Guidance and IDEA. 2 C.F.R. §§ 200.339 and 200.332(f) and (h); 34 C.F.R. §§ 300.149, 300.600, and 300.604. Further, under 2 C.F.R. § 200.303, the SEA 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 SEA must monitor its compliance with the requirements of the Federal award.

Dispute Resolution 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. §§ 300.151 through 300.153;
2. The mediation requirements in 34 C.F.R. § 300.506; and
3. 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.

Mediation

Under 34 C.F.R. § 300.506(a), each SEA 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. § 300.506(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 B 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. § 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.

State Complaint Procedures

Under 34 C.F.R. § 300.151, each SEA 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. § 300.153. Under 34 C.F.R. § 300.153, 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 B of the Act or the Part B regulations, including the facts on which the statement is based. Under 34 C.F.R. § 300.153(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. § 300.152(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an on-site investigation, if the SEA 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. § 300.506;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA 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 SEA’s final decision.

Under 34 C.F.R. § 300.152(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. § 300.152(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

Due Process Complaint and Hearing Procedures: Resolution Process

Under 34 C.F.R. § 300.510(a), the LEA 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 § 300.511. Under 34 C.F.R. § 300.510(a)(3), the resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting; or the parties agree to use the mediation process described in 34 C.F.R. § 300.506.

Under 34 C.F.R. § 300.510(b)(1)–(2), if the LEA 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. § 300.510(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. § 300.515(a), the public agency must ensure that not later than 45 days after the expiration of the 30-day resolution period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), a final decision is

reached in the hearing; and a copy of the decision is mailed to the parties, unless, under C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of either party.

Expedited Due Process Complaint and Hearing Procedures

Under 34 C.F.R. § 300.532(a), the parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R §§ 300.530 and 300.531, or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 C.F.R. §§ 300.507 and 300.508(a) and (b). Under 34 C.F.R. § 300.532(c)(1), whenever a hearing is requested under 34 C.F.R. § 300.532(a), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 C.F.R. §§ 300.507, 300.508(a) through (c), and §§ 300.510 through 300.514, except as provided in 34 C.F.R. § 300.532(c)(2) through (4). Under 34 C.F.R. § 300.532(c)(2), the SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the due process complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Under 34 C.F.R. § 300.532(c)(3), a resolution meeting must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the meeting or agree to use mediation. Under 34 C.F.R. § 300.532(c)(4), a State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but, except for the timelines as modified in 34 C.F.R. § 300.532(c)(3) (governing the resolution process), the State must ensure that the requirements in 34 C.F.R. §§ 300.510 through 300.514 are met.

Significant Disproportionality Legal Requirements

Under 34 C.F.R. § 300.646, States are required to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Where significant disproportionality is occurring, the State must engage in a review, and, if appropriate, revision of policies, procedures, and practices used in the identification, placement, or discipline of a child with a disability to ensure that they comply with the requirements of IDEA; require the LEA to publicly report on the revision of policies, practices, and procedures; and require the LEA to reserve 15 percent of its IDEA Part B funds to provide CCEIS to identify and address the factors contributing to the significant disproportionality.

Under 34 C.F.R. § 300.646(d), any LEA identified with significant disproportionality is required to reserve the maximum amount of funds to provide CCEIS to address factors contributing to the significant disproportionality. In addition, an LEA that is required to use 15 percent of its IDEA Part B allocation on CCEIS because the SEA identified the LEA as having significant disproportionality under 34 C.F.R. § 300.646 will not be able to reduce local maintenance of effort (MOE) under sections 616(f) and 613(A)(2)(C) of the Act.

In determining whether significant disproportionality exists in a State or LEA the State must set a reasonable risk ratio threshold; reasonable minimum cell size; reasonable minimum n-size; and standard for measuring reasonable progress if a State uses the flexibility described in 34 C.F.R. § 300.647(d)(2).

34 C.F.R. § 300.647(b). These standards must be based on advice from stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and are subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act.

Except as provided in 34 C.F.R. § 300.647(d), the State must identify as having significant disproportionality based on race or ethnicity under 34 C.F.R. § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 34 C.F.R. § 300.647(b)(3) and (4) that exceeds the risk ratio threshold set by the State for that category.

The State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under paragraphs 34 C.F.R. § 300.647(b)(1)(i)(A) through (D), and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 34 C.F.R. § 300.647(b)(1)(iv) must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

Finally, under 34 C.F.R. § 300.173, the State must have in effect, consistent with the purposes of Part B of IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 C.F.R. § 300.8.