



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

DIRECTOR

December 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 letter is to provide an update on the status of the findings and corrective actions identified by the U.S. Department of Education's (the Department) Office of Special Education Programs (OSEP) reported in the Differentiated Monitoring and Support (DMS) monitoring report to the New York State Education Department (NYSED), dated September 21, 2023.

This letter is in response to the NYSED's October 25, 2023, email to OSEP to address the corrective actions noted in OSEP's September 21, 2023, DMS monitoring report. The findings and corrective actions in OSEP's monitoring report were identified as a result of the DMS activities conducted by OSEP during its monitoring visit to the NYSED, which occurred in May 2022.


The summary of monitoring priorities and outcomes chart, included in this letter, describes the monitoring component, finding, required actions, OSEP analysis, and status of finding(s) based on the evidence received by OSEP to date.

OSEP will repost the September 21, 2023, DMS monitoring report with the following corrections:

- Revision to the number of Special Education Quality Assurance Offices (SEQA) in the State from 16 to seven (p. 4);
- Replacement of the word "monitoring" process with "determination" process under the annual determination section (p. 6);
- Removal of text error in State complaint corrective actions section item number three to read "from" (p. 12); and
- Removal of the statement, "only available in New York City," and revised State regulation citation (p. 14).

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,

A handwritten signature in black ink that reads "Valerie C. Williams". The signature is written in a cursive style with a large initial 'V'.

Valerie C. Williams
Director
Office of Special Education Programs

cc: Part B Director

SUMMARY OF MONITORING FINDINGS AND STATUS

MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/STATUS
<p>Monitoring and Improvement</p> <p>1.1 OSEP finds that 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 local educational agency’s (LEA’s) compliance with the Individuals with Disabilities Education Act (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).</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>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.</p>	<p>In an email to OSEP dated, October 25, 2023, the NYSED provided the following documents for review:</p> <ul style="list-style-type: none"> • Policy and Procedures on Compliance Indicators, and Policy, Procedures for needs intervention (NI) and needs assistance (NA) Districts, • Indicator 11 Verification and Follow-Up Review Manuals, • Indicator 12 Verification and Follow-Up Review Manuals, and • Policies and Procedures on compliance Indicators. <p>OSEP previously reviewed and considered these documents while conducting its monitoring activities. The NYSED has not provided updated policies and procedures that include the consideration of other factors beyond a District being an Every Students Succeeds Act (ESSA) targeted district or a district having long-standing noncompliance. In New York, reporting on compliance indicators, for the State Performance Plan/Annual Performance Report (SPP/APR), is done annually for Indicators B-4, B-9, and B-10 by all LEAs and Indicators B-11, B-12, or B-13 on a 6-year LEA cycle.</p> <p>The NYSED does not consider performance on these compliance indicators within its local determination process unless an LEA reaches a designation of long-standing noncompliance,</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required actions under finding 1.1.</p>

MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/STATUS
		<p>which the NYSED defines as a period greater than 12 months for uncorrected noncompliance from issuance of a Corrective Action Plan (CAP). The NYSED must consider LEA performance on the SPP/APR compliance indicators annually when making IDEA determinations not just when an LEA has uncorrected noncompliance greater than a period of 12 months for these indicators.</p> <p>In its email dated October 25, 2023, the NYSED provided the Integrated Monitoring Policies and Procedures document. OSEP reviewed this document during its monitoring activities including the activities from the document provided in the October 25, 2023, email listed as:</p> <ul style="list-style-type: none"> • Coordinated Intervention Districts • SPP Compliance Indicators 4, 9, 10 and Significant Disproportionality • SPP Compliance Indicators 11,12, and 13 • Stakeholder Concerns and/or State Complaint • Investigations • Special Education Due Process • Districts that Exceed 1percent on New York State Alternate Assessment • Services Provided by Approved Private School-age Programs Serving Students with Disabilities and Preschool Special Education Programs • Approved Special Education Program Applications 	

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		<ul style="list-style-type: none"> • Office of Children and Family Services Reviews • Justice Center Activities • Class Size Variances; and • IDEA Subrecipient Monitoring <p>While OSEP recognizes these activities, the NYSED has not provided policies, procedures, or evidence of how the Integrated Monitoring Policies and Procedures are implemented, how activities other than those for SPP/APR data reporting are chosen, or how these activities are considered in the IDEA determination process, beyond LEAs with uncorrected noncompliance in excess of 12 months.</p> <p>Subsequent review of the submitted documents and additional information provided by the NYSED does not include 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. The finding remains open.</p>	
<p>Monitoring and Improvement</p> <p>1.1 OSEP finds that the State does not consider the following factors: (1) performance on compliance indicators; (2) valid and</p>	<p>Evidence of Implementation— as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <ol style="list-style-type: none"> 1. The State’s IDEA annual LEA determinations with any 	<p>In an email to OSEP dated, October 25, 2023, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the</p>

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<p>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).</p>	<p>underlying protocols or rubrics that were used in completing the determinations.</p>		<p>State must submit evidence of implementation as soon as possible, but no later than one year from the date of the DMS monitoring report.</p>
<p>Monitoring and Improvement 1.2 OSEP finds that 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.</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>2. Updated policies and procedures, documenting its process for identifying and verifying correction of noncompliance in a timely manner.</p>	<p>In an email to OSEP dated, October 25, 2023, the NYSED provided the following documents for review:</p> <ul style="list-style-type: none"> • Policy and Procedures on Compliance Indicators, and Policy, Procedures for needs intervention (NI) and needs assistance (NA) Districts, • Procedures for the Resolution of Noncompliance for School Districts and Non-district Programs. <p>OSEP previously reviewed and discussed these documents during monitoring activities with the NYSED. OSEP is aware that the activities being conducted by SEQA staff serve different purposes under the Support Plan development and Coordinated Intervention District Modules. However, the documents provided do not address how findings of noncompliance are made when SEQA staff are conducting root</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required actions under finding 1.2.</p>

MONITORING COMPONENT & FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/STATUS
		<p>cause analysis, implementing a focused module activity, or reviewing redacted student records.</p> <p>Subsequent review of the submitted documents, information provided by the NYSED, and information provided for consideration under finding 1.1, does not include updated policies and procedures, documenting the process for identifying and verifying correction of noncompliance in a timely manner. The finding remains open.</p>	
<p>Monitoring and Improvement</p> <p>1.2 OSEP finds that 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.</p>	<p>Evidence of Implementation— as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <p>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.</p>	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit evidence of implementation as soon as possible, but no later than one year from the date of the DMS monitoring report.</p>
<p>Dispute Resolution: State Complaints</p> <p>2.1 OSEP finds that the State does not have reasonable</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p>	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit policies and procedures to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September</p>

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<p>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.</p>	<ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> 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); 		<p>21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required actions under finding 2.1.</p>
<p>Dispute Resolution: State Complaints</p> <p>2.1 OSEP finds that the State 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</p>	<p>Evidence of Implementation— as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <ol style="list-style-type: none"> 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, 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit evidence of implementation as soon as possible, but no later</p>

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<p>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.</p>	<p>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;</p> <p>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.</p>		<p>than one year from the date of the DMS monitoring report.</p>
<p>Dispute Resolution: State Complaints</p> <p>2.2 OSEP finds that the State 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</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <p>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</p>	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit policies and procedures to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required</p>

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<p>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.</p>	<p>ultimately addressed in the final due process hearing decision. Specifically, the revised policies and procedures must:</p> <p>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.</p>		<p>actions under finding 2.2.</p>
<p>Dispute Resolution: State Complaints</p> <p>2.2 OSEP finds that the State 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</p>	<p>Evidence of Implementation— as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <p>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.</p> <p>4. Documentation for set aside State complaints that were</p>	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit evidence of implementation as soon as possible, but no later than one year from the date of the DMS monitoring report.</p>

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<p>due process hearing on the basis that the statute of limitations had expired during the pending due process hearing is inconsistent with IDEA.</p>	<p>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).</p>		
<p>Dispute Resolution: Due Process Hearings</p> <p>3.1 OSEP finds that the State 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.</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. Quarterly dispute resolution data from NYCPS, which will be publicly reported, and include: <ol style="list-style-type: none"> 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. 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit policies and procedures to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required actions under finding 3.1.</p>

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	<ul style="list-style-type: none"> 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 		

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	<p>resolved in a timely manner, provide:</p> <ul style="list-style-type: none"> 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. 		
<p>Dispute Resolution: Due Process Hearings</p> <p>3.1 OSEP finds that the State 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, the NYCPS continues to receive over 10,000 new due process hearings each year which compounds this backlog.</p>	<p>Evidence of Implementation—as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <ul style="list-style-type: none"> 1. Evidence of the State’s tracking mechanism and monitoring activities which ensure due process hearing decisions are being implemented in a timely manner. 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit evidence of implementation as soon as possible, but no later than one year from the date of the DMS monitoring report.</p>

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<p>Dispute Resolution: Due Process Hearings</p> <p>3.2 OSEP finds that the State, 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.</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 2. Ensure that the PSN provided to parents of children in the 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. 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit policies and procedures to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required actions under finding 3.2.</p>
<p>Dispute Resolution: Due Process Hearings</p> <p>3.2 OSEP finds that the State, 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</p>	<p>Evidence of Implementation— as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <ol style="list-style-type: none"> 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. 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit evidence of implementation as soon as possible, but no later than one year from the date of the DMS monitoring report.</p>

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<p>process rights that parents forfeit if they participate in the accelerated review process.</p>			
<p>Dispute Resolution: Due Process Hearings</p> <p>3.3 OSEP finds that the State 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 34 C.F.R. §§ 300.511 through 300.514, 300.149, and 300.600. The 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.</p>	<p>Policies and Procedures— within 90 days of the date of the DMS monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 3. Revised policies and procedures which demonstrate that the State has a mechanism to: <ol style="list-style-type: none"> 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. 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit policies and procedures to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit updated policies and procedures within 90 days of the date of the report for the required actions under finding 3.3.</p>

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<p>Dispute Resolution: Due Process Hearings</p> <p>3.3 OSEP finds that the State 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 34 C.F.R. §§ 300.511 through 300.514, 300.149, and 300.600. The 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.</p>	<p>Evidence of Implementation— as soon as possible, but no later than one year from the date of the DMS monitoring report:</p> <ol style="list-style-type: none"> 1. Evidence of the State’s tracking mechanism and monitoring activities which ensure due process hearing decisions are being implemented in a timely manner. 	<p>In its October 25, 2023, email to OSEP, the NYSED did not submit evidence of implementation to address this finding.</p>	<p>OPEN</p> <p>OSEP reminds the NYSED that, as detailed in OSEP’s September 21, 2023, DMS monitoring report, the State must submit evidence of implementation as soon as possible, but no later than one year from the date of the DMS monitoring report.</p>