

DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT

OFFICE OF SPECIAL EDUCATION PROGRAMS

U.S. DEPARTMENT OF EDUCATION

STATE	VIRGINIA
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DATE	MARCH 13, 2024
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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

March 13, 2024

By Email

Honorable Lisa Coons
State Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218

Email: lisa.coons@doe.virginia.gov

Dear Superintendent Coons:

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 general supervision systems which encompass States' responsibilities to ensure that States and their subgrantees and contractors meet the requirements of the Individuals with Disabilities Education Act (IDEA). Those requirements include: 1) Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and 2) Ensuring that public agencies meet the program requirements under Parts B and C of the 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) OSEP uses a cyclical process to assign States to cohorts through its DMS process; and 2) OSEP identifies States with emerging issues that require out-of-cycle monitoring. In letters dated February 17, 2023, and May 12, 2023, OSEP informed Virginia's State educational agency (SEA), the Virginia Department of Education (VDOE), that the State was selected for DMS targeted monitoring and summarized the status of findings issued in a letter to the State dated June 23, 2020.¹ Specifically, OSEP had new or continued concerns with the State's implementation of general supervision, dispute resolution, and confidentiality requirements under the IDEA Part B.

Based on feedback from the public and other interested parties, additional information in the State's corrective actions for the 2020 monitoring report findings, and a January 2023 phone call (at the State's request), OSEP identified concerns related to the implementation of the IDEA Part B that, while related to the 2020 findings, went beyond the scope of those original findings, and required additional monitoring activities. A description of the additional monitoring areas included:

¹ OSEP is providing a separate letter on the status of the findings and corrective actions in OSEP's June 23, 2020 letter.

1. General supervision procedures for the identification and correction of noncompliance (34 C.F.R. §§ 300.149 and 300.600).
 - OSEP examined the implementation of the revised policies, procedures, and practices VDOE developed in response to OSEP’s June 23, 2020 DMS report and its February 17, 2023 letter. VDOE demonstrated and provided evidence to OSEP of a reasonably designed general supervision system. This system included multiple components such as monitoring to — (1) improve educational results and functional outcomes for infants and toddlers with disabilities and their families and children with disabilities; and (2) ensure that local educational agencies (LEAs) meet the requirements under 34 C.F.R. §§ 300.149, 300.600 through 300.604, and 300.608. No further action is required in this area.
2. State complaint policies, procedures, and practices (34 C.F.R. §§ 300.151 through 300.153).
 - Based on its review of available documents, including a review of OSEP-selected State complaint files, information, and interviews conducted, OSEP has identified three findings of noncompliance with the IDEA Part B State complaint requirements at the conclusion of our monitoring activities.
3. Due process complaint and hearing procedures (34 C.F.R. §§ 300.507 through 300.516).
 - Based on its review of available documents, including a review of OSEP-selected due process complaint files, information, and interviews conducted, OSEP has identified two findings of noncompliance with the IDEA Part B due process requirements at the conclusion of our monitoring activities.
4. Confidentiality of information procedures, particularly parent consent before the disclosure of personally identifiable information (34 C.F.R. §§ 300.611 through 300.626).
 - Based on its review of available documents, information, and interviews conducted, OSEP has identified two findings of noncompliance with the IDEA Part B confidentiality requirements at the conclusion of our monitoring activities.
5. Independent educational evaluation (IEE) policies, procedures, and practices (34 C.F.R. § 300.502).
 - Based on its review of available documents, information, and interviews conducted, OSEP has identified one finding of noncompliance with the IDEA Part B IEE requirements at the conclusion of our monitoring activities.

Additionally, during OSEP’s targeted monitoring activities, based on its review of available documents, information, and interviews conducted, OSEP has identified one finding of noncompliance with the IDEA Part B requirements related to mediation (34 C.F.R. § 300.506) and one finding of noncompliance related to prior written notice (34 C.F.R. § 300.503). OSEP is making the findings, listed below, and described in more detail further in the monitoring report, including any required actions. As part of its required actions, the State must review Sections II.A.6, 8, and 11 of its Federal fiscal year (FFY) 2024 IDEA Part B grant application to ensure that, for any finding for which a specific assurance is needed, the State’s responses are consistent with its specific assurances.

This DMS targeted monitoring report summarizes OSEP’s review of the IDEA Part B requirements regarding the above-mentioned monitoring areas. Monitoring activities included interviews regarding the State’s process to monitor its LEAs for compliance with the IDEA Part B requirements, and how the State identifies and verifies the correction of noncompliance. Interviews with the State also included VDOE’s mediation, State

complaint, and due process hearing oversight. In addition to these interviews, OSEP reviewed publicly available information, policies and procedures, and other related documents VDOE submitted to OSEP. The targeted monitoring activities did not include discussions regarding data or fiscal management as issues related to these components were not the underlying rationale for the targeted monitoring activities.

OSEP conducted virtual and onsite interviews with representatives from VDOE during the month of September 2023. The interviews included staff from VDOE’s Office of Program Improvement, Office of Dispute Resolution, Office of Facilities and Family Engagement, Office of Instructional Services, Early Childhood Quality and Workforce, and the Office on Department of Policy and Communications. OSEP also conducted interviews with a group of due process hearing officers and other interested parties, including parents of children with disabilities and military connected families, and groups that represent the families and communities served by Virginia through engagement with the Parent Educational Advocacy Center, the OSEP-funded Parent Training and Information Center for Virginia, and Formed Families Forward, the Community Parent Resource Center for Virginia. Local engagement also included targeted interviews with local-level staff, teachers, specialized instructional support personnel, Section 619 (preschool) coordinators, and related service providers to better understand how the LEAs are applying State and local policies, procedures, and practices in the implementation of IDEA of a select group of LEAs within the State. OSEP’s engagement occurred through targeted interviews, conversations, and other appropriate means of collecting information, such as meeting with Virginia’s State Special Education Advisory Committee, and a focus group of LEA special education directors organized by the Virginia Council of Administrators of Special Education. OSEP would like to acknowledge the efforts of Dr. Samantha Hollins in collaborating with OSEP to coordinate and carry out the targeted monitoring activities.

A summary of OSEP’s 10 findings is listed below and described in more detail further in the monitoring report, including any required actions. In addition, OSEP plans to provide technical assistance to VDOE related to the State’s funding of, and provision of services to, two-year-old children with disabilities to ensure consistency with the requirements of Parts C and B of the IDEA. OSEP’s review of monitoring priorities and components of general supervision did not examine the implementation of the IDEA Part B requirements by all LEAs within the State, and OSEP cannot determine whether the State’s systems are fully effective in implementing these requirements without reviewing data at the local level.

Summary of Monitoring Priorities and Outcomes

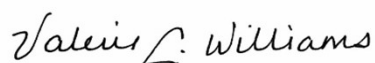
MONITORING COMPONENT	FINDINGS SUMMARY
1. State Complaints	<p>1.1 OSEP finds that the State’s regulations and State complaint procedures contain provisions that are inconsistent with the following IDEA requirements:</p> <ul style="list-style-type: none"> a. 34 C.F.R. §§ 300.33 and 300.153(b); b. 34 C.F.R. § 300.153(b); c. 34 C.F.R. § 300.152(a)(5) and OSEP’s IDEA Part B Dispute Resolution Procedures guidance; and d. 34 C.F.R. §§ 300.11(a) and (b) and 300.152(a). <p>1.2 OSEP finds that, in resolving State complaints, the State does not consistently identify and require correction of all noncompliance with IDEA requirements identified through complaint resolution</p>

MONITORING COMPONENT	FINDINGS SUMMARY
	<p>when the noncompliance was not specifically alleged in the complaint. This practice is inconsistent with the requirements in 34 C.F.R. §§ 300.149, 300.151, 300.153, 300.600 through 300.602, and OSEP guidance.</p> <p>1.3 OSEP finds that the State’s model form for State complaints is inconsistent with 34 C.F.R. § 300.509(a) in that it requires information beyond what is required by the IDEA regulation at 34 C.F.R. § 300.153(b) without designating the additional information requested as optional.</p>
2. Mediation	2.1 OSEP finds that the State’s procedure requiring parties to sign a confidentiality pledge prior to the commencement of mediation, as permitted in 8VAC20-81-190.E.3, is inconsistent with 34 C.F.R. § 300.506(b)(8) and OSEP guidance.
3. Due Process	<p>3.1 OSEP finds that the State’s regulation at 8VAC20-81-210.A and due process complaint procedures apply only to “LEAs” or “school divisions” rather than all of the entities listed under IDEA’s “public agency” definition as required by 34 C.F.R. §§ 300.33 and 300.507.</p> <p>3.2 OSEP finds that the State’s regulation at 8VAC20-81-210.P.9.b. permits the SEA to provide approval for an extension of the due process hearing timeline when neither party requests an extension of time which is inconsistent with the requirements in 34 C.F.R. § 300.515(a) and (c).</p>
4. Prior Written Notice	4.1 OSEP finds that the State’s guidance indicating that prior written notice is not required after an individualized education program (IEP) team meeting if the child’s IEP has not been finalized is inconsistent with the requirements in 34 C.F.R. § 300.503(a).
5. Confidentiality	<p>5.1 OSEP finds that the State’s Frequently Asked Questions (FAQ) guidance is inconsistent with the State’s regulatory definition of education record. Further, the State’s FAQ guidance is inconsistent with IDEA’s definition of education record in 34 C.F.R. § 300.611(b) and in Family Education Rights and Privacy Act of 1974 (FERPA) definition at 34 C.F.R. § 99.3.</p> <p>5.2 OSEP finds that the State has not provided the required content in its notice to parents in a manner that is adequate to fully inform parents under 34 C.F.R. § 300.612.</p>
6. Independent Educational Evaluation (IEE)	6.1 OSEP finds that the State has not ensured that its LEAs are implementing the IEE requirements in the State’s revised

MONITORING COMPONENT	FINDINGS SUMMARY
	regulation at 8VAC20-81.170.B.2.a and c, and IDEA's requirements in 34 C.F.R. § 300.502.

OSEP appreciates VDOE's continued efforts to improve the implementation of IDEA and recognizes the challenges in developing a reasonably designed general supervision system which balances ensuring compliance and improving results. VDOE's investment in establishing and implementing a reasonably designed general supervision system ensures Statewide accountability that swiftly identifies and corrects noncompliance and the full implementation of IDEA to improve educational results for children with disabilities. If you have any questions or would like to request technical assistance, please contact your OSEP State Lead.

Sincerely,



Valerie C. Williams

cc: Part B State Director

Enclosure:

DMS Monitoring Report
Appendix

DISPUTE RESOLUTION

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
STATE COMPLAINTS			
1.1 Procedures for Filing a State Complaint			
<p>Under 34 C.F.R. § 300.151, the State 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 in writing and signed 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.</p>			
<p>a. Parties to a State Complaint</p> <p>Under 34 C.F.R. § 300.151, the State 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 in writing and signed and contain a statement alleging that a <i>public agency</i> has violated a requirement of Part B of the Act or the Part B regulations, including the facts on which the statement is based. (Emphasis added).</p>	<p><i>The State’s regulations and complaint procedures restrict the parties subject to the State complaint procedures. By using the term “LEA” or “school division,” individuals and organizations do not have notice that the IDEA complaint procedures are available to resolve allegations against not only LEAs, but also the SEA and other agencies included in the definition of public agency at 34 C.F.R. § 300.33.</i></p> <p>“Complaint” as defined by the State in the State regulations, the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, at 8VAC20-81-10, means a request that the SEA investigate an alleged violation by a “<i>local educational agency</i>.” (Emphasis added). The State’s regulation at 8VAC20-81-200.B.3 requires that a State complaint “contain a statement that a <i>local educational agency</i> has violated the Act or these special education regulations.” (Emphasis added).</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s regulations and State complaint procedures contain provisions that are inconsistent with 34 C.F.R. §§ 300.33 and 300.153(b).</p> <p>Specifically, the State’s regulations at 8VAC20-81-10 and 8VAC20-81-200.B.3 and its complaint procedures apply to “LEAs” or “school divisions” rather than to all of the entities listed under IDEA’s definition of “public agency” as required by</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant application the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A copy of VDOE’s State complaint procedures, revised to be consistent with the requirements in 34 C.F.R. §§ 300.33 and 300.153(b). 2. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise its regulations at 8VAC20-81-10 and 8VAC20-81-200.B.3, as soon as possible but in no case later than one year from the date of OSEP’s 2024

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>Under 34 C.F.R. § 300.33, the definition of public agency includes the SEA, LEAs, educational service agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.</p>	<p>In its State complaint procedures, VDOE states that the purpose of the procedures is to provide, among other things, “an opportunity for <i>school divisions</i> and complainants to mutually resolve differences.” (Emphasis added). See Complaint Resolution Procedures (Revised Jan. 2022).</p> <p>IDEA’s State complaint procedures are available to resolve allegations that a <i>public agency</i> violated a requirement of Part B of IDEA or its implementing regulations. (Emphasis added). IDEA defines public agency to include the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33.</p> <p>OSEP notes that the State’s procedural safeguards document properly states that the IDEA State complaint procedures may be used to file a complaint alleging a violation of any IDEA requirement “by a school division, the VDOE, or any other public agency.” See Your Family’s Special Education Rights (Sept. 2013), p. 17.</p>	<p>34 C.F.R. §§ 300.33 and 300.153(b).</p>	<p>DMS report, to ensure the regulations are consistent with the requirements in 34 C.F.R. §§ 300.33 and 300.153(b);</p> <ol style="list-style-type: none"> (2) The State will issue a memorandum or other directive, to all LEAs, parent advocacy groups, and other interested parties advising them of the changes proposed to the State regulations and State complaint procedures to ensure they are consistent with the IDEA requirements as described above and provide a copy to OSEP; and (3) The State will comply with 34 C.F.R. §§ 300.33 and 300.153(b) throughout the FFYs 2023 and 2024 grant periods. <p>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:</p> <ol style="list-style-type: none"> 1. A copy of the finalized changes to the State’s

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
			regulations and documentation of the revisions.
<p>b. Required Content for a State Complaint</p> <p>Under 34 C.F.R. § 300.153, the complaint, among other requirements, must be in writing and signed and contain a statement alleging that a public agency has violated a requirement of IDEA Part B or its implementing regulations, including the facts on which the statement is based.</p> <p>The complaint must include the complainant’s signature and contact information. If the complaint alleges a violation with respect to a specific child, the complaint also must include the name and address of the residence of the child; the name of the school the child is attending; in the case of a homeless child or youth, available contact information for the child and name of the school the child is attending; a description of the problem of the child, including facts</p>	<p><i>The State’s regulation and State complaint procedures exceed IDEA’s requirements in a manner that could limit a parent’s or other individual’s right to file a State complaint under 34 C.F.R. § 300.153(b).</i></p> <p>The State’s regulation at 8VAC20.81-200.B.7 requires that a complaint “contain all relevant documents.” Section I.A.6 of VDOE’s State complaint procedures requires the complaint to “contain all relevant information and supporting documentation.” These requirements exceed IDEA’s requirements for filing a State complaint.</p> <p>The State’s requirement that the complainant provide “all relevant information and supporting documentation” could limit an individual or organization’s ability to file a State complaint. Further, the SEA could inappropriately dismiss complaints that do not include the additional information but otherwise, meet IDEA’s filing requirements.</p> <p>OSEP notes that the content in the State’s procedural safeguards document that details the requirements for filing a State complaint is consistent with 34 C.F.R. § 300.153(b). See Your Family’s Special Education Rights (Rev. Sept. 2013), p. 20.</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s regulation and State complaint procedures contain provisions that are inconsistent with 34 C.F.R. § 300.153(b).</p> <p>Specifically, the State’s regulation at 8VAC20.81-200.B.7 requires that a complaint “contain all relevant documents,” and Section I.A.6 of VDOE’s State complaint procedures requires the complaint to “contain all relevant information and supporting documentation,” both of which are not required under 34 C.F.R. § 300.153(b).</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant application the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A copy of VDOE’s State complaint procedures, revised to be consistent with the requirements in 34 C.F.R. § 300.153(b). 2. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise its regulation at 8VAC20-81-200.B.7, as soon as possible but in no case later than one year from the date of OSEP’s 2024 DMS report, to ensure it is consistent with the requirements in 34 C.F.R. § 300.153(b); (2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>related to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.</p>			<p>parties advising them of the changes proposed to the State regulation and State complaint procedures to ensure they are consistent with the IDEA requirements as described above and provide a copy to OSEP; and</p> <p>(3) The State will comply with 34 C.F.R. § 300.153(b) throughout the FFYs 2023 and 2024 grant periods.</p> <p>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:</p> <ol style="list-style-type: none"> 1. A copy of the finalized changes to the State’s regulation and documentation of the revisions.
<p>c. Complaints Filed by Non-Parent Complainants</p> <p>The State must resolve a State complaint regardless of whether it has been filed by the child’s parent or by an</p>	<p><i>The State’s regulation and State complaint procedures do not allow for a case-by-case determination as to whether non-personally identifiable information in the SEA’s decision on a State complaint can be provided to a non-parent complainant as required</i></p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant application the State must submit to OSEP:</p>

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>organization or individual other than the child’s parent. In resolving such a complaint, the State would be required to follow the minimum State complaint procedures in 34 C.F.R. § 300.152 as it would for any other State complaint that alleges that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations. This includes issuing a written decision to the complainant that addresses each allegation in the complaint and contains –</p> <ul style="list-style-type: none"> (i) Findings of fact and conclusions; and (ii) The reasons for the SEA’s final decision in accordance with 34 C.F.R. § 300.152(a)(5), subject to the conditions discussed below. <p>Under these circumstances, parental consent must be obtained before the State may provide personally identifiable information (PII) about a child to the non-parent complainant as part of the complaint decision.</p>	<p><i>by 34 C.F.R. § 300.152(a)(5) and OSEP guidance.</i></p> <p>The State’s regulation at 8VAC20-81-200.D.1.c states:</p> <p style="padding-left: 40px;">If the complaint is filed by an individual other than the child’s parent(s) and/or their legal counsel, VDOE notifies the complainant that the parent will be provided a copy of the complaint and pertinent correspondence.</p> <p>The SEA’s decision on the complaint is not shared with the complainant unless the complainant obtains the parent’s consent and files the appropriate consent for release of information.</p> <p>Similarly, VDOE’s State complaint procedures at II.A.5 state:</p> <p style="padding-left: 40px;">If an individual other than a parent, a student who has reached the age of majority, or their attorney files a complaint, [the State’s Office of Dispute Resolution and Administrative Services] ODRAS notifies the individual of VDOE’s receipt of the complaint and informs the individual that the parent or adult student will be informed of its receipt of the complaint and will be provided copies of the complaint relevant correspondence, if any, and this Complaint Resolution Procedures document. Unless a release of information is on file with ODRAS, the individual</p>	<p>The State’s regulations and State complaint procedures contain provisions that are inconsistent with 34 C.F.R. § 300.152(a)(5) and OSEP’s IDEA Part B Dispute Resolution Procedures guidance.</p> <p>Specifically, the State’s regulation at 8VAC20-81-200.D.1.c and the State complaint procedures at II.A.5 do not allow for a case-by-case determination as to whether non-PII in the SEA’s final decision on a State complaint can be shared with a non-parent complainant, which is inconsistent with 34 C.F.R. § 300.152(a)(5) and OSEP’s IDEA Part B Dispute Resolution Procedures guidance.</p>	<ol style="list-style-type: none"> 1. A copy of VDOE’s State complaint procedures, revised to be consistent with the requirements in 34 C.F.R. § 300.152(a)(5) and OSEP’s guidance. 2. A specific written assurance from the State that shows – <ol style="list-style-type: none"> (1) The State will revise the State’s regulation at 8VAC20-81-200.D.1.c, as soon as possible but in no case later than one year from the date of OSEP’s 2024 DMS report, to be consistent with the requirements in 34 C.F.R. § 300.152(a)(5) and OSEP’s guidance; (2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested parties advising them of the changes proposed to the State regulation and State complaint procedures to ensure they are consistent with the IDEA requirements as described above and

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<p>34 C.F.R. §§ 99.30 and 300.622.</p> <p>If parental consent is not obtained, any PII about the child who is the subject of the complaint must be redacted from the SEA’s written decision on the complaint. Because the complaint resolution would likely involve the child’s PII, it may not be possible for the SEA’s decision to be released to the non-parent complainant. The SEA must make this determination on a case-by-case basis but should not withhold relevant non-PII from the complainant regarding the results of the State’s complaint resolution. See Question B-11 in OSEP’s Questions and Answers on IDEA Part B Dispute Resolution Procedures (July 23, 2013).</p>	<p>receives no further written communication resulting from the complaint process.</p> <p>The State’s regulation and complaint procedures do not provide for a case-by-case determination of the information that must be withheld when resolving a complaint filed by someone other than the child’s parent and the parent has not consented to the release of their child’s PII. Specifically, when resolving a complaint filed by someone other than the child’s parent and the SEA does not receive the parent’s permission to disclose PII about the child, the SEA must make a case-by-case determination about information that must not be disclosed. OSEP has advised that the SEA should not withhold relevant non-PII from the complainant regarding the results of the SEA’s complaint resolution.</p>		<p>provide a copy to OSEP; and</p> <p>(3) The State will comply with 34 C.F.R. § 300.152(a)(5) throughout the FFYs 2023 and 2024 grant periods.</p> <p>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:</p> <ol style="list-style-type: none"> 1. A copy of the finalized changes to the State’s regulation and documentation of the revisions.
<p>d. Calculating the 60-Day Time Limit for State Complaint Resolution</p> <p>Unless otherwise indicated as business day or school day, the use of the term “day” in the Part B regulations means</p>	<p><i>The State’s regulatory definition of “calendar day” and “business day” is inconsistent with 34 C.F.R. § 300.11(a) and (b), and IDEA’s 60-day timeline for resolving State complaints as required by 34 C.F.R. § 300.152(a).</i></p> <p>The State’s regulation at 8VAC20-81-10 includes a definition of “calendar days” that is</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant application the State must submit to OSEP:</p>

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>calendar day. See 34 C.F.R. § 300.11(a). “Business day” as used in the IDEA regulations means Monday through Friday, exception for Federal and State holidays (unless holidays are specifically included in the designation of business day.” See 34 C.F.R. § 300.11(b).</p> <p>Thus, the “time limit of 60 days” in 34 C.F.R. § 300.152(a) must be measured in calendar days.</p>	<p>inconsistent with IDEA requirements. Specifically, the State defines calendar days to mean:</p> <p style="padding-left: 40px;">consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or [F]ederal or [S]tate holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or [F]ederal or [S]tate holiday.</p> <p>VDOE’s State complaint procedures at IX.C.1 state:</p> <p style="padding-left: 40px;">For the purposes of these Complaint Resolution Procedures, unless the context requires otherwise...business day and calendar day shall have the definitions set forth in 8VAC20-81-10.</p> <p>Under 34 C.F.R. § 300.11(a) the IDEA regulation defines day to mean calendar day, (which would be inclusive of weekends, Federal and State holidays) unless otherwise indicated as business day or school day. Under 34 C.F.R. § 300.11(b), the IDEA regulation defines business day to mean Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day).</p> <p>The State’s definition of “calendar day” includes components of both “day” and “business day,” which is inconsistent with IDEA.</p>	<p>The State’s regulations and State complaint procedures contain provisions that are inconsistent with 34 C.F.R. §§ 300.11(a) and (b) and 300.152(a).</p> <p>Specifically, the State’s definition of “calendar day,” as referenced in its regulation in 8VAC20-81-10 and State complaint procedures includes components of the IDEA definition of both “day” and “business day,” which is inconsistent with 34 C.F.R. §§ 300.11(a) and (b) and the requirements in 300.152(a).</p>	<ol style="list-style-type: none"> 1. A copy of VDOE’s State complaint procedures, revised to be consistent with the requirements in 34 C.F.R. §§ 300.11(a) and (b) and 300.152(a). 2. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise its regulation at 8VAC20-81-10, as soon as possible but in no case later than one year from the date of OSEP’s 2024 DMS report, to be consistent with the requirements in 34 C.F.R. §§ 300.11(a) and (b) and the requirements in 300.152(a); (2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested parties advising them of the changes proposed to the State regulations and State complaint procedures to ensure they are consistent with the IDEA requirements as described above and

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	<p>OSEP notes that in its review of OSEP-selected State complaint decisions, VDOE correctly applied IDEA’s definition of “calendar day” when calculating the 60-day time limit, notwithstanding the State rule and language in the State complaint procedures.</p> <p>OSEP observed through its review of State complaint decisions, that VDOE applies the definition at 8VAC20-81-10 when calculating the timeline for the State-permitted process to appeal the SEA’s decision on a State complaint (i.e., extending the timeline to the next business day if the 30th day falls on a weekend or holiday). Since this is a State-imposed requirement, VDOE may implement this State-established timeline for parties to file an appeal and the State’s decision on such an appeal and should make clear that this timeline is not measured in calendar days.</p> <p>VDOE has acknowledged that the State’s regulatory definition of “calendar day” is inconsistent with the IDEA regulation. In response to OSEP’s 2019 monitoring of VDOE’s due process hearing procedures, VDOE assured OSEP that it will revise its regulatory definition for consistency with the IDEA’s definition in 34 C.F.R. § 300.11(a) and (b). With its August 7, 2023 corrective action submission to OSEP, VDOE provided proposed language for the revised definition and draft communication to the public about the regulatory change.</p>		<p>provide a copy to OSEP; and</p> <p>(3) The State will comply with 34 C.F.R. §§ 300.11(a) and (b) and 300.152(a) throughout the FFYs 2023 and 2024 grant periods.</p> <p>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:</p> <ol style="list-style-type: none"> 1. A copy of the finalized changes to the State’s regulation and documentation of the revisions.

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<p>1.2 State Complaint Procedures and Remedies for Denial of Appropriate Services: Addressing Noncompliance Found Through State Complaint Resolution</p> <p>Under 34 C.F.R. § 300.151, the State 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.</p> <p>In resolving a complaint in which the State has found a failure to provide appropriate services, the State, pursuant to its general supervisory authority under IDEA Part B</p>	<p><i>VDOE does not consistently address all noncompliance with IDEA requirements found through its State complaint resolution procedures. Specifically, OSEP observed and discussed with the State, an instance where although additional noncompliance was found, VDOE addressed only the noncompliance related to the allegations included in the State complaint. This practice is inconsistent with the requirements in 34 C.F.R. §§ 300.149, 300.151, 300.153, 300.600 through 300.602, and OSEP guidance.</i></p> <p>OSEP reviewed a sample of State complaint files and found that the State did not consistently address noncompliance related to an IDEA requirement if that requirement was not specified by the complainant in the State complaint. For example, in one complaint decision, VDOE identified a violation regarding the notice provided to the parent about who would be in attendance in advance of an IEP Team meeting. In that decision, VDOE stated that, because “the complainant did not raise this allegation in her complaint it would be inappropriate to address this further in this <i>Letter of Findings</i>.”</p> <p>While the State has some discretion in how it addresses noncompliance with an IDEA requirement that was not specifically cited in a State complaint, it must ensure that it identifies all noncompliance and ensures that it is corrected in a timely manner as required under 34 C.F.R. § 300.600(e). Further, if the</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State, in resolving State complaints, does not consistently identify and require correction of all noncompliance with IDEA requirements identified through complaint resolution when the noncompliance was not specifically alleged in the complaint. This practice is inconsistent with 34 C.F.R. §§ 300.149, 300.151, 300.153, 300.600 through 602, and OSEP guidance.</p>	<p>Within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> A copy of the revised procedure describing how the State will both review for and ensure the timely identification of all noncompliance with IDEA requirements found through its complaint resolution that was not included in the complainant’s allegations consistent with 34 C.F.R. §§ 300.149, 300.151, 300.153, 300.600 through 300.602 and OSEP guidance. <p>Evidence of Implementation—as soon as possible, but no later than one year from the date of OSEP’s monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> Examples of actual complaint decisions (redacted) that demonstrate how the State both conducted its review for, and addressed, noncompliance with an IDEA requirement that was not included in the complainant’s allegation if such situations occur within one year of this

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<p>and consistent with the provisions in 34 C.F.R. § 300.151(b), must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement), and the appropriate future provision of services for all children with disabilities.</p> <p>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.</p> <p>In exercising its monitoring responsibilities under 34 C.F.R. § 300.600(e), the State 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</p>	<p>noncompliance resulted in a failure to provide appropriate services to the child who is the subject of the complaint, the SEA must provide for corrective action appropriate to address the needs of the child and the appropriate future provision of services to children with disabilities, consistent with 34 C.F.R. § 300.151(b).</p> <p>OSEP has advised that the State must, consistent with 34 C.F.R. §§ 300.149 and 300.600 through 300.602, identify noncompliance when it determines that an LEA’s policy, procedure, or practice, including those that are child-specific, is inconsistent with an applicable IDEA requirement, another IDEA-related Federal requirement, or any specific IDEA grant award terms or conditions. See OSEP QA 23-01, Section B.</p> <p>VDOE explained it has a process whereby the State’s monitors are informed of such additional noncompliance. VDOE noted it had received objections from LEAs in the past about making a finding of noncompliance on an issue not included in the original complaint, and the LEA argued it was not on notice of the issue. In this instance, the State’s appeal reviewer found in favor of the LEA.</p> <p>Although the State reported it has other mechanisms for addressing the noncompliance, it is unclear to OSEP that those mechanisms are consistently used. VDOE acknowledged it must revise its</p>		<p>monitoring report or if there are no such complaint decisions with these remedies, an explanation of how the State implemented its revised procedures.</p>

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<p>year after the State’s written notification of noncompliance. See also OSEP’s Question and Answer document 23-01, State General Supervision Responsibilities under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (July 24, 2023) (OSEP QA 23-01).</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p>practice and stated it will “work on a way to make sure its complaint procedure” is implemented in a way that “affords a degree of fairness to the school division without compromising the responsibility to provide [a free appropriate public education] FAPE to the student.”</p>		
<p>1.3 State Model Forms</p> <p>Under 34 C.F.R. § 300.509(a), each State must develop model forms to assist parents and other parties in filing a State complaint under §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms. Parents, public agencies, and other parties may use the appropriate model form or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in</p>	<p><i>VDOE’s model State complaint form is inconsistent with the requirements in 34 C.F.R. § 300.509(a). Specifically, the model form includes data fields beyond those required by the IDEA regulation without specifying that the additional information asked for is optional. Further, VDOE imposes a requirement that complainants submit documentation to support their allegations and specific requirements for labeling documents and recordings.</i></p> <p>VDOE staff acknowledged that at the time of OSEP’s visit, the State’s model form included data fields beyond those required under IDEA without identifying those fields as optional information. For example, as part of the required content area providing the subject(s) the complaint involves, the form instructs the complainant to include information about the</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s model form for State complaints is inconsistent with 34 C.F.R. § 300.509(a) in that it requires information beyond what is required by the IDEA regulation at 34 C.F.R. § 300.153(b) without designating the additional information requested as optional.</p>	<p>Within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A copy of the State’s revised model State complaint form that clearly identifies any information requested that is not required by 34 C.F.R. § 300.153(b). 2. Notice that the State has posted the revised model form on the SEA’s web site and other appropriate methods to ensure wide dissemination to all LEAs, parent advocacy groups, and other interested parties.

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<p>§300.153(b) for filing a State complaint.</p>	<p>child’s disability. The model form also instructs the complainant they must include any documentation that supports their allegation(s) as an attachment:</p> <p>Should audio recordings (CD or cassette tape) or video recordings (DVD or videotape) be submitted to support an allegation(s), there must be a reference made, either in the complaint document or in the recording label, as to where on the recording the supporting information is located.</p> <p>An SEA may request information not required by 34 C.F.R. § 300.153(b) but may not require it and must ensure that the failure to provide the additional information does not delay the resolution of the complaint.</p>		
MEDIATION			
<p>2.1 Confidentiality of Mediation Discussions</p> <p>Under 34 C.F.R. § 300.506, each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. If the</p>	<p><i>Under State regulation 8VAC20-81-190.E.3, parties may be required to sign a confidentiality pledge before participating in mediation. OSEP has advised such a practice is inconsistent with the voluntary nature of IDEA’s mediation process and the requirements in 34 C.F.R. § 300.506(b)(8).</i></p> <p>The State’s regulation at 8VAC20-81-190.E.3 states the following:</p> <p>Parties to the mediation process may be required to sign a consent form to mediate containing a confidentiality</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s procedure requiring parties to sign a confidentiality pledge prior to the commencement of mediation as permitted in 8VAC20-81-190.E.3, is</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant application the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise the regulation in 8VAC20-81-190.E.3, as soon as possible but in no case

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<p>parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that— (1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (2) is signed by both the parent and a representative of the agency who has the authority to bind the agency.</p>	<p>pledge prior to the commencement of the mediation process.</p> <p>IDEA and its implementing regulations require public agencies to establish and implement procedures to allow parties to resolve disputes involving any matter under IDEA and its implementing regulations, including matters arising prior to the filing of a due process complaint, through a mediation process. 20 U.S.C. 1415(e)(1) and 34 C.F.R. § 300.506(a). The public agency must ensure, among other requirements, that the mediation process is voluntary on the part of the parties. 34 C.F.R. § 300.506(b)(1)(i).</p> <p>Additionally, mediation may not be 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 IDEA. 34 C.F.R. § 300.506(b)(1)(ii). The goal of mediation is for the parties to resolve the dispute and execute a legally binding written agreement reflecting that resolution. See OSEP’s Letter to Anonymous (July 31, 2020).</p> <p>The requirement that discussions that occur during mediation remain confidential is fully applicable regardless of whether the parties sign a separate confidentiality pledge or agreement prior to commencing the mediation process. While mediation is voluntary on the part of the parties, it is impermissible under IDEA for a public agency to condition participation in mediation on the parties’ signing a confidentiality pledge. While nothing</p>	<p>inconsistent with 34 C.F.R. § 300.506(b)(8) and OSEP guidance.</p>	<p>later than one year from the date of OSEP’s 2024 DMS report to be consistent with the requirements in 34 C.F.R. § 300.506(b)(8) and OSEP’s guidance;</p> <p>(2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested parties advising that the State will be revising 8VAC20-81-190.E.3 so that parties can no longer be required to sign a confidentiality pledge prior to the commencement of mediation and provide a copy to OSEP; and</p> <p>(3) The State will comply with 34 C.F.R. § 300.506(b)(8) throughout the FFYs 2023 and 2024 grant periods.</p> <p>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:</p>

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	<p>in IDEA is intended to prevent States from allowing parties to sign a confidentiality pledge, public agencies may not condition their participation in mediation on such an agreement, because such a requirement is counter to the voluntary nature of the mediation process.</p> <p>OSEP notes that Virginia’s procedural safeguards document does not include content related to the use of confidentiality pledges in mediation. See Your Family’s Special Education Rights (Rev. Sept. 2013), pages 16-17.</p> <p>VDOE staff acknowledged that the State regulation is inconsistent with OSEP’s guidance on this issue. As a follow up to OSEP’s onsite visit, on October 5, 2023, VDOE sent electronic mail (email) correspondence to the State’s IDEA mediators alerting them of OSEP’s guidance that “parties cannot be required to sign a confidentiality agreement as a condition for participation in mediation.”</p>		<p>1. A copy of the finalized changes to the State’s regulation and documentation of the revisions.</p>
DUE PROCESS			
<p>3.1 Filing a Due Process Complaint</p> <p>Under 34 C.F.R. § 300.507(a), a parent or a public agency may file a due process complaint on any of the matters</p>	<p><i>The State’s regulation and due process procedures restrict the parties subject to the due process complaint. By using the term “LEA” or “school division” individuals and organizations do not have notice that the IDEA due process procedures are available to resolve allegations against not only LEAs, but also the SEA and other agencies included in</i></p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant</p>

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<p>described in 34 C.F.R. § 300.503(a)(1) and (2) (relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child). (Emphasis added). The due process complaint must allege a violation that occurred not more than two years before the date the parent or <i>public agency</i> knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under Part B of the IDEA regulations, in the time allowed by that State law, except that the exceptions to the timeline described in 34 C.F.R. § 300.511(f) of the regulations apply. (Emphasis added).</p> <p>Under 34 C.F.R. § 300.33, the definition of public agency includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school</p>	<p><i>the definition of public agency at 34 C.F.R. § 300.33.</i></p> <p>The State’s regulation at 8VAC20-81-210.A states:</p> <p>The Virginia Department of Education provides for an impartial special education due process hearing system to resolve disputes between parents and <i>local educational agencies</i> with respect to any matter relating to: (22-214 of the Code of Virginia; 34 C.F.R. §§ 300.121 and 300.507 through 300.518)... (Emphasis added).</p> <p>The State’s regulation and VDOE’s guidance document, Navigating the Maze of the Due Process Requirements, (Sept. 2020), state:</p> <p>Either a parent(s) or the <i>local school division (LEA)</i> may file a request for a due process hearing when a disagreement arises regarding the identification of a child with a disability, evaluation of a child with a disability (including disagreements regarding payment for an independent educational evaluation), educational placement and services of the child, and the provision of a free appropriate public education. (Emphasis added). p. 2.</p> <p>IDEA’s due process complaint and hearing procedures are available to resolve allegations that a <i>public agency</i> violated a requirement of Part B of IDEA or its implementing</p>	<p>The State’s regulation at 8VAC20-81-210.A and due process complaint procedures apply only to “LEAs” or “school divisions” rather than all of the entities listed under IDEA’s “public agency” definition as required by 34 C.F.R. §§ 300.33 and 300.507.</p>	<p>application the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise its regulation at 8VAC20-81-210.A, as soon as possible but in no case later than one year from the date of OSEP’s 2024 DMS report to be consistent with the requirements in 34 C.F.R. §§ 300.33 and 300.507; (2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested parties advising them of the changes proposed to the State regulations and due process procedures and guidance to ensure they are consistent with the IDEA requirements as described above and provide a copy to OSEP; and (3) The State will comply with 34 C.F.R. §§ 300.33 and 300.507 throughout

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.</p>	<p>regulations. (Emphasis added). The term public agency as defined in 34 C.F.R. § 300.33, includes not only LEAs, but also the SEA and other agencies.</p>		<p>the FFYs 2023 and 2024 grant periods.</p> <p>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:</p> <ol style="list-style-type: none"> 1. A copy of the finalized changes to the State’s regulation and documentation of the revisions.
<p>3.2 Due Process Timelines and Convenience of Hearings and Reviews</p> <p>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 period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c)—</p> <ol style="list-style-type: none"> (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties. <p>Under 34 C.F.R. § 300.515(c) a hearing officer may grant</p>	<p><i>The State’s regulation at 8VAC20-81-210.P.9.b., and due process hearing procedures, permit the SEA to provide approval for an extension of the due process hearing timeline when neither party requests an extension of time, which is inconsistent with the requirements in 34 C.F.R. § 300.515(a) and (c).</i></p> <p>The State’s regulation at 8VAC20-81-210.P.9.b. states:</p> <p>In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the [VDOE] to the extension[.]</p> <p>The State’s regulation, which permits the SEA to provide approval for an extension of the due</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s regulation at 8VAC20-81-210.P.9.b. permits the SEA to provide approval for an extension of the due process hearing timeline when neither party requests an extension of time, which is inconsistent with the requirements in 34 C.F.R. § 300.515(a) and (c).</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, but not later than when the State submits its FFY 2024 IDEA Part B grant application the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise its regulation at 8VAC20-81-210.P.9.b., as soon as possible but in no case later than one year from the date of OSEP’s 2024 DMS report to be consistent with the requirements in 34 C.F.R. §§ 300.515(a) and (c);

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>specific extensions of time beyond the periods set out in paragraph (a) of this section at the request of either party.</p>	<p>process hearing timeline when neither party requests an extension of time, is inconsistent with the requirements in 34 C.F.R. § 300.515(a) and (c).</p>		<p>(2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested parties advising them of the changes proposed to the State regulations and due process procedures and guidance to ensure they are consistent with the IDEA requirements as described above and provide a copy to OSEP; and</p> <p>(3) The State will comply with 34 C.F.R. §§ 300.515(a) and (c) throughout the FFYs 2023 and 2024 grant periods.</p> <p>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:</p> <ol style="list-style-type: none"> 1. A copy of the finalized changes to the State’s regulation and documentation of the revisions.

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
PROCEDURAL SAFEGUARDS: PRIOR WRITTEN NOTICE			
<p>4.1 Prior Written Notice</p> <p>Under 34 C.F.R. § 300.503(a), the public agency must provide written notice to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p> <p>Under 34 C.F.R. § 300.503(b) the prior written notice must include the content required in 34 C.F.R. § 300.503(b)(1) through 300.503(b)(7).</p>	<p><i>The State’s written guidance that advises LEAs they are not required to provide prior written notice after an IEP Team meeting if the child’s IEP has not been finalized is inconsistent with the requirements in 34 C.F.R. § 300.503(a).</i></p> <p>In Guidance on Prior Written Notice in the Special Education Process (May 2013), the State advises its LEAs on when and how prior written notice must be provided to parents. OSEP identified concerns with VDOE’s direction to its LEAs when there are multiple IEP Team meetings that do not result in a finalized IEP. In this circumstance, VDOE states in its guidance that:</p> <p>...the regulations do not require that prior written notice be provided after every IEP meeting in a series of meetings while the IEP is still under development, no final IEP is being proposed and parental consent is not being sought. Providing prior written notice in such a piecemeal fashion to simply document the discussions, agreements, disagreements, proposed and refused actions that occurred during each of the meetings is not required by [S]tate and/or [F]ederal special education laws and regulations. The IEP development process is a fluid process, wherein previously discussed and seemingly agreed upon items may be revisited and altered. Therefore, imposing</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s guidance indicating that prior written notice is not required after an IEP Team meeting if the child’s IEP has not been finalized is inconsistent with the requirements in 34 C.F.R. § 300.503(a).</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A copy of the State’s revised policy that demonstrates that the State requires its LEAs to issue prior written notice consistent with the requirements in 34 C.F.R. § 300.503(a).

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>a requirement that an LEA provide prior written notice any time an IEP team meeting concludes without a proposed IEP and where subsequent [sic] meetings are anticipated and/or scheduled, would be premature and plainly unworkable.</p> <p>VDOE staff explained their view that because Virginia regulations require the parent’s consent before any changes to a child’s identified disability category, IEP, or placement can be implemented, the provision of prior written notice does not have the same effect as it would in States that do not require parental consent before making such changes. VDOE staff stated that if a parent makes a request during an IEP Team meeting and the LEA refuses that request, the parent should be provided documentation of the LEA’s decision on the parent’s request at the end of the meeting.</p> <p>OSEP finds no exception in the IDEA regarding the provision of prior written notice, simply because the IEP Team is expected to reconvene to complete its work – whether finalizing an IEP, reviewing the results of a reevaluation, discussing a parent’s concern about their child’s progress, or other matters.</p> <p>To illustrate OSEP’s concern regarding the State’s written guidance, consider the following example. A parent could believe that the public agency’s offer of proposed services for their child at the first, in a series of IEP Team meetings, will not appropriately address</p>		

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>the child’s needs. The parent makes a specific request to add or remove a service from their child’s IEP. Under VDOE’s guidance document, the LEA would not provide the parent with prior written notice until the IEP had been finalized. This practice could delay resolution of, or fail to effectively document, the parent’s disagreement with the LEA’s proposal.</p> <p>The State was unable to demonstrate that it has a mechanism in place to ensure that delaying prior written notice in the circumstance described in the State’s guidance does not infringe on parents’ timely access to dispute resolution options and resolving disagreements about their child’s educational program and placement.</p>		

CONFIDENTIALITY

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>5.1 Education Record Definition</p> <p>Under 34 C.F.R. § 300.611(b), education record means the type of records covered under the definition of “education records” in 34 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g).</p> <p>Under FERPA, at 34 C.F.R. § 99.3, the term education records means those records that are directly related to a student; and maintained by an educational agency or institution or by a party acting for the agency or institution.</p>	<p><i>There is a discrepancy between the State’s definition of “education record” as it appears in the State regulation and in relevant guidance documents. Further, the State’s guidance is inconsistent with IDEA and FERPA requirements.</i></p> <p>The State regulation at 8VAC20-81-10 includes the following definition of education record:</p> <p>“Education record” means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as “scholastic record.” In addition to written records, this also includes electronic exchanges between school personnel and parent regarding matters associated with the child’s educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of “education record” in the regulations implementing the Family Education Rights and Privacy Act. (20 U.S.C. § 1232g(a)(3); 8VAC22.1-289; 34 C.F.R. § 300.611(b)).</p> <p>However, the State’s guidance document titled, Regulations Governing Special Education Programs for Children with Disabilities in Virginia Frequently Asked Questions (FAQ) (2022), includes language that expressly allows each locality (i.e., LEA or school division) to determine which electronic communications, <i>if any</i>, constitute an education</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s FAQ guidance is inconsistent with the State’s regulatory definition of education record. Further, the State’s FAQ guidance is inconsistent with IDEA’s definition of education record in 34 C.F.R. § 300.611(b) and in FERPA at 34 C.F.R. § 99.3.</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. An updated copy of the State’s FAQ guidance document which removes language that is inconsistent with the State’s regulation and with the requirements in 34 C.F.R. § 300.611(b) and in FERPA at 34 C.F.R. § 99.3. <p>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:</p> <ol style="list-style-type: none"> 1. A copy of a memorandum or other directive that the State has issued to all LEAs, parent advocacy groups, and other interested parties advising them of the change to the State confidentiality

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>record. (Emphasis added). The language in the FAQ document specifically states:</p> <p>It is up to each locality to determine which electronic data and communication (including communication between and among school personnel), if any, constitute an education record and how the school division will maintain electronic education records in ways that will allow parent(s) access to those records if they request a copy or want to inspect or review the student’s entire record.</p> <p>The State’s guidance in its FAQ gives LEAs flexibility to decide whether any electronic communications are an education record, thus permitting and accepting the possibility that LEAs could determine that no electronic communications are education records. This is inconsistent with the State’s regulatory definition of education record that specifically includes electronic exchanges between school personnel and parent regarding matters associated with the child’s educational program. The State’s FAQ is also inconsistent with the minimum requirements of what constitutes an education record under 34 C.F.R. § 300.611(b) and FERPA, at 34 C.F.R § 99.3.</p>		<p>procedures and FAQ guidance.</p>
<p>5.2 Notice to Parents</p> <p>Under 34 C.F.R. § 300.612(a), the SEA must give notice that is adequate to fully inform</p>	<p><i>The State’s notice to parents related to the requirements for protecting the confidentiality of PII does not include all of the content required in 34 C.F.R. § 300.612.</i></p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report, the State must submit to OSEP:</p>

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>parents about the requirements of 34 C.F.R. § 300.123 including—</p> <p>(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;</p> <p>(2) A description of the children on whom personally identifiable information [PII] is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;</p> <p>(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and</p>	<p>OSEP reviewed the following policies that VDOE cited for meeting this provision:</p> <p>Procedural Safeguards Notice: Your Family's Special Education Rights – Virginia Procedural Safeguards Notice (Rev. Sept. 2013).</p> <p>Student Records Virginia Department of Education (2022) (website landing page and multiple links cited on this page).</p> <p>The State’s notice to parents does not include all of the required content in 34 C.F.R. § 300.612(a)(1) and most of the required content in 34 C.F.R. § 300.612(a)(2), (3) and (4) (including the uses to be made of PII, allowable disclosures of PII to third parties, and destruction of PII when requested by parents).</p> <p>VDOE’s notice is not provided in a manner that is adequate to fully inform parents under 34 C.F.R. § 300.612(a)(3).</p>	<p>this analysis, OSEP finds that:</p> <p>The State has not provided the required content in its notice to parents in a manner that is adequate to fully inform parents under 34 C.F.R. § 300.612.</p> <p>Specifically, OSEP found that the inclusion of multiple website locations for just part of one (of the four) content requirements (e.g., record retention) is not reasonably designed or adequate to fully inform parents under 34 C.F.R. § 300.612(a)(3).</p>	<p>1. A copy of the State’s revised notice that includes all of the content in 34 C.F.R. § 300.612.</p> <p>Evidence of Implementation—as soon as possible, after 90 days, the State must submit to OSEP:</p> <p>1. Evidence that the State has issued (and provided to OSEP a copy) a memorandum or other directive that the State has issued to all LEAs, parent advocacy groups, and other interested parties advising them of the changes made to the State’s notice and any guidance to ensure they are consistent with the IDEA requirements as described above.</p>

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>destruction of personally identifiable information; and</p> <p>(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. part 99.</p>			

INDEPENDENT EDUCATIONAL EVALUATIONS

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>6.1 Independent Educational Evaluations</p> <p>Under IDEA, the parent of a child with a disability has the right to obtain an independent educational evaluation (IEE) of their child, subject to certain conditions. 34 C.F.R. § 300.502(a)(1).</p> <p>Upon receiving a request for an IEE, the public agency must provide to parents, information about where an IEE may be obtained, and agency criteria applicable for IEEs. 34 C.F.R. § 300.502(a)(2).</p> <p>A parent has the right to an IEE at public expense if they disagree with an evaluation obtained by the public agency, subject to certain conditions. 34 C.F.R. § 300.502(b)(1).</p> <p>If a parent requests an IEE at public expense, the public agency must, without</p>	<p><i>The State has not ensured that its LEAs comply with the IEE requirements in the State’s revised regulation at 8VAC20-81.170.B.2.a and c, and IDEA’s requirements in 34 C.F.R. § 300.502.</i></p> <p>OSEP continues to receive inquiries from parents who report, and often provide documentation demonstrating, that their LEA is not following required procedures when responding to the parent’s request for an IEE at public expense.</p> <p>VDOE acknowledged it must take additional steps to ensure LEAs comply with the State’s revised regulation at 8VAC20-81.170.B.2.a and c, and IDEA’s requirements in 34 C.F.R. § 300.502. In its August 7, 2023, corrective action submission to OSEP, VDOE proposed to take the following actions pending approval from OSEP:</p> <ol style="list-style-type: none"> (1) Require local school divisions to provide assurances that the required review of policies, procedures, and practices was conducted with certification and date to be provided by the local division superintendent or their designee. (2) Review the IEE policies and procedures from the five specific LEAs as requested by OSEP in its February 17, 2023, correspondence to VDOE. Any noncompliance will be identified, and a formal report issued to the LEA with required corrective action. 	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State has not ensured that its LEAs are implementing the IEE requirements in the State’s revised regulation at 8VAC20-81.170.B.2.a and c, and IDEA’s requirements in 34 C.F.R. § 300.502.</p> <p>OSEP remains concerned about LEA compliance with this requirement and looks forward to seeing evidence of their implementation.</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. A copy of the finalized monitoring protocols the State will use in its cyclical monitoring to evaluate its LEAs’ compliance with 34 C.F.R. § 300.502 and the State’s revised regulation at 8VAC20-81.170.B.2.a and c. <p>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:</p> <ol style="list-style-type: none"> 1. A summary of the results of the State’s review of the five LEAs’ procedures, including copies of correspondence issued to any LEA with identified noncompliance with the

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing pursuant to 34 C.F.R. §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet the public agency’s criteria. 34 C.F.R. § 300.502(b)(2).</p> <p>If the public agency files a due process complaint to request a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. 34 C.F.R. § 300.502(b)(3). A parent aggrieved by that decision would have the right to appeal the decision to the SEA pursuant to 34 C.F.R. § 300.514, in a State with a two-tier due process hearing system, or in a State with a one-tier due process hearing system, to</p>	<p>(3) Incorporate the review of policies, procedures, and practices regarding IEEs in the State’s cyclical general supervision and monitoring process in order to conduct a detailed review of each local school division in Virginia.</p> <p>During the onsite visit, OSEP recommended that VDOE implement the actions listed above. Subsequent to the visit, VDOE provided documentation of its progress toward carrying out these actions. Specifically, the State provided a copy of the October 10, 2023 email that included a link to the survey it sent to its LEA Superintendents requiring each LEA to: (1) review its policies, procedures, and practices related to IEEs for consistency with the State’s revised Administrative Code; and (2) provide a certification by October 31, 2023 to document that the review had been completed. In its November 9, 2023 email correspondence to OSEP, the State reported that it is conducting follow up monitoring activities with 14 of its LEAs based on the information contained in, or missing from, their certification submissions, along with concerns raised by the LEAs’ constituents.</p> <p>On November 3, 2023, VDOE submitted draft protocols to evaluate LEA compliance with the IEE requirements as a component of the State’s cyclical monitoring. In a November 17, 2023 telephone call, OSEP provided technical assistance and suggested revisions to the State’s draft monitoring protocols.</p>		<p>requirements in 34 C.F.R. § 300.502.</p> <p>2. Documentation that demonstrates the State has evaluated LEAs’ compliance with the requirements in 34 C.F.R. § 300.502 as a component of its most recent cyclical monitoring.</p>

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>bring a civil action in an appropriate State or Federal court pursuant to 34 C.F.R. § 300.516.</p> <p>While a public agency may request that the parent specify the areas of disagreement, a public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE at public expense or filing a due process complaint to defend the public agency’s evaluation.</p> <p>34 C.F.R. § 300.502(b)(4).</p> <p>A parent is entitled to only one IEE at public expense each time the LEA conducts an evaluation with which the parent disagrees.</p> <p>34 C.F.R. § 300.502(b)(5).</p> <p>Under 34 C.F.R. § 300.502(c), if the parent obtains an IEE at public expense or shares with the public agency an evaluation obtained at</p>			

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>private expense, the results of the evaluation—</p> <p>(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and</p> <p>(2) May be presented by any party as evidence at a hearing on a due process complaint regarding that child.</p> <p>If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.</p> <p>Under 34 C.F.R. § 300.502(e)(1), if an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent</p>			

Legal Requirements	Noncompliant Policy, Procedure, or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>those criteria are consistent with the parent’s right to an IEE. Except for the criteria established pursuant to 34 C.F.R. § 300.502(e)(1), a public agency may not impose conditions or timelines related to obtaining an IEE at public expense.</p>			

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 the 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 State Performance Plan (SPP)/Annual Performance Report (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 SPP. 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.

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 disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. Under 34 C.F.R. § 300.506(b)(1), the State's procedures must ensure that the mediation process:

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.

The State must include procedures for effective implementation of the SEA’s final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliant. 34 C.F.R. § 300.152(b)(2).

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 34 C.F.R. § 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), 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 34 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 consistent with the requirements of 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. A hearing officer is not permitted to extend the expedited due process hearing timeline.

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. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint. 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.