

DMS REPORT

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

STATE	NEW YORK
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DATE	FEBRUARY 29, 2024
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IDEA	PART C
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CONTENTS	LETTER.....1
	PROVISION OF EARLY INTERVENTION SERVICES5
	MONITORING AND IMPROVEMENT12
	FISCAL MANAGEMENT17
	DISPUTE RESOLUTION20
	APPENDIX.....29



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

DIRECTOR

February 29, 2024

By Email

James V. McDonald, M.D., M.P.H.
Commissioner
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Dear Dr. McDonald:

The purpose of this monitoring report is to provide a summary of the results of the Differentiated Monitoring and Support (DMS) activities conducted by the U.S. Department of Education's (the Department) Office of Special Education Programs (OSEP). As part of its DMS process, States are monitored on their general supervision systems which encompass the States' responsibility to ensure that States and their subgrantees and contractors meet the requirements of the Individuals with Disabilities Education Act (IDEA). Those requirements include: 1) Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and 2) Ensuring that public agencies meet the program requirements under Parts B and C of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for infants, toddlers, children, and youth with disabilities. During the DMS process¹ OSEP examined the State's policies and procedures and State-level implementation of these policies and procedures regarding the following monitoring priorities and components of general supervision:

- Monitoring and Improvement
- Data including the State Performance Plan/Annual Performance Report (SPP/APR)
- Fiscal Management: Single Line of Responsibility
- Dispute Resolution
- Provision of Early Intervention Services

This DMS monitoring report summarizes OSEP's review of IDEA Part C requirements regarding these general supervision monitoring priorities and components. OSEP conducted interviews with representatives from the New York State Department of Health (NYSDOH), the State lead agency (LA) that is responsible for administering New York's Early Intervention Program (NYEIP), through its Bureau of Early Intervention (BEI), during September 2022 through November 2022, and an onsite visit on November 29, 2022, through December 1, 2022. The interviews with NYSDOH staff included BEI's Director, Associate Directors and staff from its Provider Approval, Due Process and Monitoring Unit, Data and Program Evaluation Unit and its

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

Financial Planning and Policy Unit. In addition to interviews with NYSDOH staff, OSEP reviewed publicly available information, policies, procedures, monitoring reports, dispute resolution documents, and other related information that NYSDOH submitted to OSEP. Finally, OSEP solicited feedback from various groups of interested parties and representatives from early intervention service (EIS) programs ² that administer NYEIP at the local level in order to gather a broad range of perspectives on the State’s system of general supervision.³

Based on a review of available documents, information gathered, and interviews conducted, OSEP has identified thirteen findings of noncompliance with IDEA Part C requirements at the conclusion of our monitoring activities. OSEP is making the following findings, listed below, and described in more detail further in the monitoring report, including any required actions. OSEP’s findings, especially regarding failure to make IDEA Part C services available in a timely manner, are also reflected in the Office of the New York State Comptroller’s February 28, 2023, State Audit report, Oversight of the Early Intervention Program (State Audit).⁴

Finally, OSEP has not identified noncompliance in the data component; therefore, the data section is not included in the narrative below. OSEP’s review of monitoring priorities and components of general supervision did not include an examination of implementation IDEA Part C requirements by all the local programs within your State, and OSEP cannot determine whether the State’s systems are fully effective in implementing these requirements without reviewing data at the local level.

Summary of Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDINGS SUMMARY
1. Provision of Early Intervention Services	<p>1.1 OSEP finds that the State is unable to ensure that early intervention services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner as required by 34 C.F.R. §§ 303.112 and 303.342(e).</p> <p>1.2 OSEP finds that the State is unable to ensure that early intervention services that are needed by the child are identified on the individualized family service plan (IFSP) based on the unique needs of the child as required by 34 C.F.R. §§ 303.13(a), 303.322(c), and 303.344(d).</p> <p>1.3 OSEP finds that the State is unable to ensure that early intervention services are available in all geographic areas in the State, consistent with 34 C.F.R. § 303.207.</p>
2. Monitoring and Improvement	2.1 OSEP finds that the State does not identify noncompliance in a timely manner using its data system, as required under 34 C.F.R. §§ 303.120 and 303.700 through 303.702.

² NYSDOH has both EIS programs under 34 C.F.R. § 303.11 and EIS providers under 34 C.F.R. § 303.12.

³ Interviews were held with the following counties/municipalities that administer NYEIP at the local level: Erie, Clinton, Onondaga, Albany, Monroe, Steuben, and Nassau as well as with the New York City Department of Health and Mental Hygiene (NYC DOHMH).)

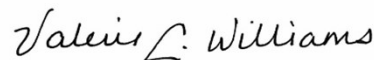
⁴ See the Office of the New York State Comptroller Report, [Oversight of the Early Intervention Program](#) (February 28, 2023) (State Audit).

MONITORING COMPONENT	FINDINGS SUMMARY
	2.2 OSEP finds that the State does not verify the correction of all findings of noncompliance related to IDEA Part C (beyond SPP/APR indicators) as required under 34 C.F.R. § 303.120 and its monitoring responsibilities in 34 C.F.R. § 303.700(e).
3. Fiscal Management	<p>3.1 OSEP finds that the State does not have a methodology, including policies and procedures, to track all State and local public funding sources to ensure compliance with the IDEA Part C Maintenance of Effort (MOE) requirements in 34 C.F.R. § 303.225(b).</p> <p>3.2 OSEP finds that the State has not consistently ensured that it coordinates all available resources as required under 34 C.F.R. § 303.120(b).</p> <p>3.3 OSEP finds that the State’s System of Payments (SOP) policy does not reflect the State’s practice as required by 34 C.F.R. §§ 303.203(b)(1), 303.510, 303.520, and 303.521.</p>
4. Dispute Resolution	<p>State Complaints</p> <p>4.1 OSEP finds that the State does not have written State complaint procedures that are reasonably designed to implement the dispute resolution requirements specific to:</p> <ul style="list-style-type: none"> a. A complaint filed by an organization or individual from another State as required by 34 C.F.R. § 303.432(a)(1). b. The resolution of State complaints which must include (1) the failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement) as required in 34 C.F.R. § 303.432(b)(1); and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families as required in 34 C.F.R. § 303.432(b)(2). c. Effective implementation of the LA’s final decision including technical assistance (TA) activities, negotiations, and corrective actions to achieve compliance as required in 34 C.F.R. § 303.433(b)(2). d. Extension of the 60 day timeline for State complaint resolution consistent with 34 C.F.R. § 303.433(b)(1). e. Set aside of written complaints being addressed in a due process hearing until the conclusion of the hearing as required in 34 C.F.R. § 303.433(c)(1).

MONITORING COMPONENT	FINDINGS SUMMARY
	<p>Mediation</p> <p>4.2 OSEP finds that the State has a form that does not allow parties to pursue mediation involving <i>any matter</i> under the Part C IDEA regulations as required under 34 C.F.R § 303.431(a).</p> <p>Due Process</p> <p>4.3 OSEP finds that the State does not ensure hearing officers possess knowledge of IDEA Part C requirements consistent with 34 C.F.R. § 303.435(a).</p> <p>4.4 OSEP finds that the State does not have a mechanism in place for tracking the implementation of due process hearing decisions by municipalities, contracting agencies, or providers consistent with 34 C.F.R. §§ 303.120 and 303.700.</p> <p>Procedural Safeguards</p> <p>4.5 OSEP finds that the State has not met its responsibility as the LA to ensure the effective implementation of the State’s procedural safeguards to include the LA and EIS providers in the Statewide system that is involved in the provision of early intervention services consistent with the requirements set forth in 34 C.F.R. § 303.400.</p>

We appreciate your efforts to ensure compliance and improve results for infants and toddlers with disabilities and their families. If you have any questions, please contact Susan Kauffman, your OSEP State Lead.

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs

cc: Raymond Pierce, Director, Bureau of Early Intervention
Peter Baran, Associate Director, Bureau of Early Intervention
Michael Iorio, Associate Director, Bureau of Early Intervention

Enclosure:
DMS Monitoring Report
Appendix

DISPUTE RESOLUTION

During OSEP's monitoring activities, OSEP used the DMS Dispute Resolution protocols to examine how the State implements its dispute resolution procedures, including State complaints, mediation and due process procedures. The components of NYSDOH's dispute resolution system under IDEA Part C include formal State complaints (referred to by NYSDOH as System complaints), mediation, due process hearings, and an informal TA process. OSEP notes that, in accordance with 34 C.F.R. § 303.430(d)(1), the State has adopted the IDEA Part C due process hearing procedures under 34 C.F.R. §§ 303.435 through 303.438 and 303.421(a).

Legal Requirements

State Complaint Procedures

Under 34 C.F.R. § 303.430, each LA must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 through 303.434. Under 34 C.F.R. § 303.432 this includes a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.434. Additionally, under 34 C.F.R. § 303.432, in resolving a complaint in which the LA has found a failure to provide appropriate services, the LA, pursuant to its general supervisory authority under IDEA Part C must address:

- The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's, or toddler's family (such as compensatory services or monetary reimbursement) as required under 34 C.F.R. § 303.432(b)(1); and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families as required under 34 C.F.R. § 303.432(b)(2).

Under 34 C.F.R. § 303.433(a), a State's minimum State complaint procedures under IDEA Part C must include a 60 day timeline for complaint resolution. The regulations specify two allowable reasons for extending the 60 day timeline: (1) if exceptional circumstances exist with respect to a particular complaint; or (2) if the parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the LA, public agency, or EIS provider agree to extend the time to engage in mediation pursuant to 34 C.F.R. § 303.433(b)(1). Under 34 C.F.R. § 303.433(b)(2) the LA must adopt written procedures pursuant to 34 C.F.R. § 303.432(a) to include procedures for effective implementation of the LA's final decision to include TA activities, negotiations, and corrective actions to achieve compliance.

Under 34 C.F.R. § 303.433(c)(1) if a written complaint is received that is also the subject of a due process hearing under 34 C.F.R. § 303.430(d) or contains multiple issues of which one or more are part of the hearing the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

Mediation

Under 34 C.F.R. § 303.430(b) each LA must make mediation available to parties to disputes involving any matter under IDEA Part C the opportunity to resolve disputes through a mediation process at any time and meet the requirements under 34 C.F.R. § 303.431. Under 34 C.F.R. § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to dispute, involving any matter under IDEA Part C, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

Due Process Hearings

Under 34 C.F.R. § 303.430(d) each LA must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter listed under 34 C.F.R. § 303.421(a) which is the identification, evaluation, or placement of the child, or the provision of early intervention services. The State must adopt either the IDEA Part C due process hearing procedures in 34 C.F.R. §§ 303.435 through 303.438 and provide a means of filing the due process complaint; or the IDEA Part B due process hearing procedures in 34 C.F.R. §§ 303.440 through 303.449. As stated above, the State has adopted the IDEA Part C due process hearing procedures.

At a minimum, under 34 C.F.R. § 303.435, a hearing officer must have knowledge about the provisions of IDEA Part C, including early intervention services available for infants and toddlers with disabilities and their families. The hearing officer must be able to listen to the presentation of relevant viewpoints about the due process complaint, examine all information relevant to the issues, seek to reach a timely resolution of the due process complaint and provide a record of the proceedings, including a written decision. Under IDEA Part C, the hearing officer is not an employee of the LA solely because the person is paid by the LA to implement the due process hearing procedures or mediation procedures.

Procedural Safeguards

Under 34 C.F.R. § 303.400 each LA must establish or adopt the procedural safeguards that meet the requirements of IDEA Part C, including among other things, the dispute resolution procedures in 34 C.F.R. § 303.430. The LA must ensure the effective implementation of the safeguards by each participating agency to include the LA and EIS providers in the Statewide system that is involved in the provision of early intervention services (34 C.F.R. § 303.400(a) and (b)).

See Appendix I for explanation and listing of additional legal requirements.

OSEP Analysis

NYSDOH is responsible for the intake and resolution of complaints including tracking complaints and data reporting. NYSDOH shared that State complaints are investigated if they allege a violation of New York Regulations or relevant Public Health Law that has occurred within one year of receipt of the complaint. State complaints require a 60 day timeline for resolution from the date of receipt by NYSDOH.

Due process hearings are the responsibility of NYSDOH through its Bureau of Adjudication (Bureau). The Bureau is responsible for conducting due process hearings, maintaining qualified impartial hearing officers, training, and data reporting. Requests for impartial hearings are made through NYSDOH and must be in writing. Under NYPHL Title 2-A § 2549(3) requests for hearings may be filed at any time except for requests relating to a child not being found eligible for early intervention services. These requests must be made within six months of the determination of ineligibility. Due process hearings must be completed, and a decision rendered within 30 days of receipt of the request for an impartial hearing (10 NYCRR 69-4.17(h)(4)(i)).

State Complaint Procedures

OSEP reviewed State complaint decisions that identified a failure to provide early intervention services to infants and toddlers with disabilities as well as the subsequent CAPs that local programs and providers must develop and submit when noncompliance with one or more requirements of IDEA Part C is found. The monitoring team confirmed through a review of these State-submitted documents, as well as through discussions with program representatives, that NYSDOH's written policies and procedures required under

34 C.F.R. § 303.430(c) do not effectively address the resolution of State complaints filed by a party regarding violations of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 and 303.433.

Out-of-State Parties

Through a review of the NYCRR Procedural Safeguards and discussions with NYSDOH staff, OSEP determined that NYSDOH does not have procedures in place for out-of-State parties to file a complaint, as required by 34 C.F.R. § 303.432(a)(1).

Corrective Actions

A review of State complaint decisions that identified a failure to provide services did not include corrective actions addressing the failure to provide appropriate services to the infant or toddler with a disability that was the subject of the complaint, consistent with 34 C.F.R. § 303.432(b)(1). OSEP noted during document review, and NYSDOH confirmed during interviews, that written State complaint decisions corrective actions are generally limited to changes to policies and procedures. The practice of requiring only policy and procedural changes in corrective actions does not fully meet the LA's responsibilities under 34 C.F.R. § 303.432(b), which requires not only addressing the future provisions of services for all infants and toddlers but corrective actions for any child that is the subject of the complaint. Under 34 C.F.R. § 303.432(b)(1), each LA, in resolving a State complaint where the LA has confirmed that the EIS provider has failed to provide early intervention services, must ensure that appropriate corrective actions are taken to address the needs of the infant or toddler and their family, that was the subject of the complaint, such as compensatory services or monetary reimbursement.

Implementation of State Complaint Decisions

A State's written complaint procedures must also include mechanisms to ensure the effective implementation of the LA's final decision consistent with the requirements of 34 C.F.R. § 303.433(b)(2) beyond acceptance of changes to policies and procedures prescribed in the corrective actions. While the State's CAPs require revised policies and procedures, the State acknowledged that it does not verify subsequent implementation of the revised policies and procedures.

Extension of the 60-Day Timeline

Review of dispute resolution data from reporting years 2018 through 2022 reflect an increasing number of State complaints being resolved with extended timelines beyond that of the 60 d-ay timeline set forth in 34 C.F.R. § 303.433(a). Under 34 C.F.R. § 303.433(b)(1) there are two allowable reasons for extending the 60 -day timeline for resolution of a complaint; (1) if exceptional circumstances exist with respect to a particular complaint or (2) the parent, individual, or organization under State procedures and the public agency involved agree to an extension to engage in mediation or other alternative means of dispute resolution. During discussions, NYSDOH staff acknowledged that NYSDOH has extended State complaints due to circumstances such as mail delivery, staff availability to receive mail, or just extending the complaint arbitrarily without a procedure explaining the State's process. This practice does not align with OSEP's long standing position that staff shortages, heavy caseloads, school vacations and breaks do not constitute an exceptional circumstance for an extension of the 60 -day timeline.²⁴

²⁴ See Question B-31 in OSEP's [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

Set Aside of State Complaints

In its review of State complaint tracking logs and discussions with NYSDOH staff, OSEP found that State complaints that were the subject of a due process hearing were not set aside or resolved consistent with 34 C.F.R. § 303.433(c)(1). NYSDOH reported that its practice is to dismiss the complaint and have the complainant resubmit the complaint at the conclusion of the due process hearing. NYSDOH confirmed that there is no process in place to resolve State complaints that are also the subject of a due process hearing. NYSDOH must have written procedures in place to ensure that complaints that were timely filed and set aside under 34 C.F.R. § 303.433(c)(1), are investigated if the due process hearings do not resolve the matters pending in the State complaints. Based on this information, OSEP finds that the State does not have a system in place that is reasonably designed to implement the dispute resolution requirements of IDEA Part C State complaints under 34 C.F.R. §§ 303.432 and 303.433, based on the reasons stated in the above analysis. Specifically, NYSDOH does not have written policies and procedures that address the effective resolution of any State complaints filed by any party regarding any violation of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 and 303.433 (34 C.F.R. § 303.430).

Mediation

NYSDOH indicated that its document entitled, Early Intervention Steps: A Parent's Basic Guide to the Early Intervention Program is provided to parents and guardians as procedural safeguard notice. It includes an explanation of the State's dispute resolution options, as well as model forms for each of the dispute resolution options available. The document includes a model form titled, How to Request Mediation, which states:

After sharing my concerns with my service coordinator and the county [Early Intervention Official] EIO, we are unable to reach agreement regarding the provision of early intervention services. Therefore, I would like to request mediation.”

The model form then asks parents to select from four boxes to choose the area(s) to be mediated. The State's model form includes the following:

We cannot agree on the following (check all that apply):

- Eligibility of my child for the early intervention program. I understand that the request for mediation must be made within six months of the date my child was found ineligible for services.
- Requested early intervention services or evaluations of my child and family.
- County refused to provide early intervention services or evaluations for my child and family.
- Change in early intervention services or evaluations for my child and family.

OSEP finds that the inclusion of these four prompts for parents appears to restrict the scope of mediation. OSEP is concerned that parents would interpret the language on the model form to mean that mediation is only available if one of the four circumstances listed in the form apply. Based on this information, OSEP finds the language in the model form and within NYSDOH's procedural safeguards document to be inconsistent with 34 C.F.R. § 303.430(b), which requires the LA to make mediation available to parties to disputes involving any matter under IDEA Part C to resolve disputes through a mediation process at any time.

Due Process Hearings

OSEP identified two issues with the State's due process policies and/or procedures. First, discussions with NYSDOH identified that no documents described impartial hearing officer qualifications, training requirements, and NYSDOH's oversight responsibility. BEI staff indicated that they were not aware of any agreements in place to ensure impartial hearing officers are qualified or trained in IDEA Part C regulations. BEI staff stated that beyond tracking of decision timelines all other matters relating to due process hearings are the responsibility of the Bureau of Adjudication. OSEP finds that NYSDOH does not ensure hearing officers possess knowledge of IDEA Part C. Hearing officers must possess knowledge of Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families, consistent with 34 C.F.R. § 303.435(a).

Second, NYSDOH staff acknowledged there are not mechanisms in place to track the implementation of due process hearing decisions by municipalities, contracting agencies, or providers. As stated above, NYSDOH places all responsibility for due process hearings with the Bureau of Adjudication. However, NYSDOH is ultimately responsible for ensuring hearing officer decisions are implemented. OSEP finds that NYSDOH does not have a mechanism in place for tracking the implementation of due process hearing decisions by municipalities, contracting agencies, or providers as required under 34 C.F.R. §§ 303.120 and 303.700.

Notification of Dispute Resolution Options

NYSDOH as the State LA is responsible for ensuring implementation of procedural safeguards, as required in 34 C.F.R. § 303.400, including dispute resolution. NYSDOH is responsible for ensuring that EIS providers consistently implement IDEA procedural safeguards, including its dispute resolution provisions. OSEP finds that NYSDOH has allowed multiple municipalities to have procedural safeguards that are inconsistent with the Part C IDEA regulations.

During the monitoring visit, through discussions with NYSDOH, EIS providers, and stakeholders, OSEP was informed of multiple mechanisms that are being used to resolve disputes in the State by local EIS providers that are inconsistent with IDEA dispute resolution requirements. Specifically, these are NYSDOH's TA unit, NYC's Early Intervention Affairs office, and municipalities' use of localized online complaint filing forms.

In NYC, there is a form that is inconsistent with IDEA dispute resolution provisions. NYSDOH provided documents for standard responses from the NYSDOH TA unit which include information for the NYC Consumer Affairs division encouraging parents to contact the NYC Consumer Affairs division to discuss concerns relevant to NYC early intervention. Discussions with stakeholder groups also referenced the use of the NYC Consumer Affairs division as means of addressing parent concerns. The NYC Consumer Affairs division and NYC DOHMH post the document, *Your Family Rights in Early Intervention*, on their public facing website.²⁵ This document has a section titled, "If you have questions or do not agree with a decision," that includes options such as; 1) speak with your service coordinator, 2) call a Regional Office to speak with an assistant director, 3) call Early Intervention Consumer Affairs, and 4) if the problem is not solved, or you still disagree with a decision, you have the right to ask for the decision to be reconsidered. The form then lists dispute resolution options such as, due process rights including mediation, impartial hearings, and System complaints. This form includes informal steps and actions that parties must use prior to pursuing the IDEA Part C dispute resolution rights afforded to them under 34 C.F.R. §§ 303.400 and 303.430.

²⁵ See the New York City Early Intervention program document, [Your Family Rights in Early Intervention](#) (November 2023).

Further, OSEP's review of another municipality's public facing website yielded a fillable electronic form titled, Early Intervention Complaint Form. The municipalities' Early Intervention Complaint Form, includes the following:

[It] is important that all service providers adhere to New York State Early Intervention Regulations and County Department of Health Early Intervention protocols to ensure that services your child is entitled to are being delivered as authorized in your Individualized Family Service Plan; in accordance with federal, state and local laws.

The document continues, "(we) will expedite the investigation if we should need additional information," with no reference to the dispute resolution options available under 34 C.F.R. § 303.430.

OSEP notes that a review of dispute resolution data from 2017 through 2020,²⁶ shows a decline in mediation and impartial hearing requests. OSEP is concerned that NYSDOH's model forms, limited State level written policies, referral of parties to municipalities' informal complaint systems, and municipalities' procedures that do not align with the IDEA and have the potential to unduly create barriers to a party exercising their dispute resolution rights afforded under the procedural safeguards of the Part C IDEA regulations. OSEP finds that NYSDOH has not ensured that its EIS providers have written policies and procedures for notifying parents of IDEA dispute resolution options that are consistent within the State and with IDEA in 34 C.F.R. § 303.430.

Conclusion and Action Required

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:

State Complaints

- 4.1 The State's written State complaint procedures required under 34 C.F.R. § 303.430(c) do not effectively address the resolution of State complaints filed by a party regarding violations of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 through 303.435.
 - a. The State does not have a policy in place for out-of-State parties to file a complaint consistent with 34 C.F.R. § 303.432(a)(1).
 - b. The State does not monitor its complaint decisions to ensure that: (1) the failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability and family (such as compensatory services or monetary reimbursement) as required in 34 C.F.R. § 303.432(b)(1); and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families as required in 34 C.F.R. § 303.432(b)(2).
 - c. The State does not ensure that, pursuant to 34 C.F.R. § 303.432(a), there is implementation of the LA's final State complaint decision as required in 34 C.F.R. § 303.433(b)(2).
 - d. The State inappropriately extends the 60 day timeline when resolving State complaints for reasons or circumstances that are inconsistent with 34 C.F.R. § 303.433(b)(1), pursuant to 34 C.F.R. § 303.433(b)(1).

²⁶ See the New York Part C Dispute Resolution 618 Data 2017-2020 from the [IDEA Section 618 Data Products, State Level Data Files Part C Dispute Resolution](#).

- e. The State does not have a policy for resolving complaints that are also the subject of a due process hearing under 34 C.F.R. § 303.430(d) or complaints that contain multiple issues of which one or more are part of a due process hearing.

Mediation

- 4.2 The State has a model form that does not clearly allow parties to pursue mediation involving any matter under 34 C.F.R. § 303.431(a).

Due Process

- 4.3 The State does not ensure hearing officers possess knowledge of IDEA Part C. Hearing officers must possess knowledge of Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families, consistent with 34 C.F.R. § 303.435(a).
- 4.4 The State does not have a mechanism in place for tracking the implementation of due process hearing decisions by municipalities, contracting agencies, or providers as required under 34 C.F.R. §§ 303.149 and 303.700.

Procedural Safeguards

- 4.5 The State has not ensured that its EIS providers have written policies for notifying parents of IDEA dispute resolution options that are consistent within the State and with the IDEA requirements in 34 C.F.R. § 303.430.

Required Actions

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

State Complaints

1. The following revised written State complaint policies and monitoring procedures:
 - a. Revised policy to allow complaints to be filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.432(a)(1).
 - b. Revised policy and monitoring procedures to require that when the State complaint decision identifies a failure to provide appropriate services, the decision also addresses both: 1) corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the family (such as consideration of compensatory services or monetary reimbursement) as required in 34 C.F.R. § 303.432(b)(1); and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families as required in 34 C.F.R. § 303.432(b)(2).
 - c. Updated monitoring procedures to require monitoring of the implementation of the LA's final state complaint decision as required in pursuant to 34 C.F.R. § 303.433(b)(2).
 - d. Revised state policy that informs State staff who review State complaint requests for extensions that the 60 day timeline may only be extended for the two circumstances identified in 34 C.F.R. § 303.433(b)(1).
 - e. Revised policy that if a written complaint is received is also the subject of a due process hearing under 34 C.F.R. § 303.430(d) or contains multiple issues of which one or more are part of the that hearing, the

State is required to set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing as required in 34 C.F.R. § 303.433(c)(1).

Mediation

2. Revised model form that includes expressly an option for mediation to be available for “any matter” under the Part C IDEA regulations, including matters arising prior to the filing of a due process complaint as required under 34 C.F.R. § 303.431(a).

Due Process

3. Revised due process policies and procedures to:
 - a. Reflect that due process hearing officers will be trained on IDEA Part C requirements consistent with 34 C.F.R. § 303.435(a); and
 - b. Demonstrate how the State will track the implementation of due process hearing decisions as required under 34 C.F.R. §§ 303.149 and 303.700.

Procedural Safeguards

4. A copy of its written memo notifying all EIS providers (with a copy to interested parties and OSEP) requiring them to review and revise, if needed, their dispute resolution policies to ensure that parents are notified of the three dispute resolution options, consistent with the IDEA Part C requirements in 34 C.F.R. § 303.430, and a description of how NYSDOH will ensure consistency with IDEA’s dispute resolution options.

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:

State Complaints

1. Evidence of implementing its State complaint procedures to include:
 - a. Copies of redacted state complaint decisions that include consideration of appropriate corrective actions, consistent with 34 C.F.R. § 303.432(b)(2).
 - b. A description of how the State has implemented final state complaint decisions, consistent with 34 C.F.R. § 303.433(b)(2).
 - c. Monitoring procedures and training materials that include provisions to ensure that State staff who review State complaint requests for extensions are informed that the 60 day timeline may only be extended for the two circumstances identified in 34 C.F.R. § 303.433(b)(1).
 - d. Updated data (provided with the FFY 2023 SPP/APR) for the period July 1, 2023 through June 30, 2024 regarding the number of extension requests received for State complaints and the basis for any extensions granted.

Due Process

2. Evidence of implementing its due process policies and procedures to include evidence of training held for due process hearing officers trained on IDEA Part C requirements consistent with 34 C.F.R. § 303.435(a).

Procedural Safeguards

3. Follow-up on the NYSDOH memo issued to EIS providers, a description of the actions the State has taken (including reviewing revised policies of EIS providers) to ensure that they are consistent within the State and notify parents of the three IDEA Part C dispute resolution procedures.

APPENDIX

Monitoring and Improvement Legal Requirements

In order to effectively monitor the implementation of IDEA Part C, the State must have policies and procedures that are reasonably designed to ensure that the State can meet:

1. Its general supervisory responsibility as required in 34 C.F.R. § 303.120.
2. Its monitoring responsibilities in 34 C.F.R. §§ 303.700 through 303.702, and
3. Its responsibility to annually report on the performance of the State and of each Early Intervention Service (EIS) program, as provided in 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2).

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

Under 34 C.F.R. § 303.700(b), the State's monitoring activities must primarily focus on:

1. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and
2. Ensuring that EIS programs and providers meet the program requirements under IDEA Part C, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities. Improving educational results and functional outcomes for all children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 303.700(d), the State also must ensure that when it identifies noncompliance with IDEA Part C requirements by EIS programs and providers, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance, as required under 34 C.F.R. § 303.700(e).

Further, under 34 C.F.R. § 303.120, the State must have a system that includes a single line of responsibility in a LA designated or established by the Governor that is responsible for the following: (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under IDEA Part C; and the monitoring of programs and activities used by the State to carry out IDEA Part C (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under IDEA Part C), to ensure that the State complies with IDEA Part C. The State must also have in effect a system that includes monitoring and enforcement requirements in 34 C.F.R. §§ 303.700 through 303.701 and 303.704.

In addition, under 34 C.F.R. § 303.700(a)(1), the State must monitor the implementation of IDEA Part C and under 34 C.F.R. § 303.700(a)(4) must report annually on the performance of the State and each EIS program on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the LA must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 303.700(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 303.700(c). Each State also must use the targets established in the State's performance plan under 34 C.F.R. § 303.701 and the priority areas described in 34 C.F.R. § 303.700(d) to analyze the performance of each EIS program located in the State. 34 C.F.R. § 303.702.

Data Legal Requirements

To meet the data reporting requirements of IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224 and 303.701(c), and 303.720 through 303.724, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

Fiscal Management Legal Requirements

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements. As part of this responsibility, LAs must monitor and enforce the fiscal requirements under IDEA Part C, including the payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and the system of payment policies, such as use of public benefits or insurance or private insurance to pay for Part C services in 34 C.F.R. §§ 303.520 and 303.521. If the State LA identifies noncompliance, it must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the LA's identification of the noncompliance consistent with 34 C.F.R. § 303.120(a)(2)(iv) and 303.700(e). Further, under 2 C.F.R. § 200.303, the LA must establish effective internal controls that provide reasonable assurance of compliance with "Federal statutes, regulations, and the terms and conditions of the Federal award," and the LA must monitor its compliance with the requirements of the Federal award.

Dispute Resolution Legal Requirements

Under 34 C.F.R. § 303.421(a), the State must ensure that prior written notice is provided to parents a reasonable time before the EIS provider proposes or refuses to initiate or change the identification, evaluation or placement of the infant or toddler or the provision of early intervention services. Under 34 C.F.R. § 303.421(b), this notice must be in sufficient detail to inform parents about the dispute resolution procedures.

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement:

1. The State complaint procedures requirements in 34 C.F.R. §§ 303.432 through 303.434;
2. The mediation requirements in 34 C.F.R. § 303.431; and
3. The due process complaint and impartial due process hearing requirements 34 C.F.R. §§ 303.440 through 303.449.

State Complaint Procedures

Under 34 C.F.R. § 303.432, each LA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.434. Under 34 C.F.R. § 303.434, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of IDEA Part C or the Part C regulations including the facts on which the statement is based. Under 34 C.F.R. § 303.434(c), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Under 34 C.F.R. § 303.433(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an onsite investigation, if the LA determines that an investigation is necessary.
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
 - a. At the discretion of the public agency, a proposal to resolve the complaint; and
 - b. An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 303.431;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of IDEA Part C or of this part; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - a. Findings of fact and conclusions; and
 - b. The reasons for the LA’s final decision.

Under 34 C.F.R. § 303.433(b)(1), the State’s procedures must permit an extension of the 60-day time limit only if:

1. Exceptional circumstances exist with respect to a particular complaint, or
2. The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 C.F.R. § 303.433(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

Mediation

Under 34 C.F.R. § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to dispute involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. Under 34 C.F.R. § 303.431(b)(1), the State’s procedures must ensure that the mediation process—

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent’s right to a hearing on the parent’s due process complaint, or to deny any other rights afforded under IDEA Part C; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Under 34 C.F.R. § 303.431(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the LA or an EIS provider that is involved in the provision of early intervention services or other services to the child and may not have a personal or professional interest that conflicts with the person’s objectivity.

Due Process Complaint and Hearing Procedures

Under 34 C.F.R. § 303.430(d)(1), the State must provide a means of filing a due process complaint regarding any matter listed in 34 C.F.R. § 303.421(a). Under 34 C.F.R. § 303.437(b) each LA must ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing required under Part C is completed and a written decision mailed to each of the parties. A hearing officer may grant specific

extensions of time beyond the period set out in 34 C.F.R. § 303.437(b) at the request of either party. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of IDEA Part C. 34 C.F.R. § 303.438.