

# DMS

## REPORT

### DIFFERENTIATED MONITORING AND SUPPORT

OFFICE OF SPECIAL EDUCATION PROGRAMS

U.S. DEPARTMENT OF EDUCATION

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**STATE**      **KENTUCKY**

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**DATE**      **APRIL 12, 2024**

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**IDEA**      **PART C**

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

DIRECTOR

**April 12, 2024**

By Email

The Honorable Steven Stack  
Commissioner  
Kentucky Department for Public Health  
275 E. Main Street,  
Frankfort, Kentucky 40621

Email: [steven.stack@ky.gov](mailto:steven.stack@ky.gov)

Dear Commissioner Stack:

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 States' responsibilities to ensure that States and their subgrantees and contractors meet the requirements of the Individuals with Disabilities Education Act (IDEA or the Act). 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 process<sup>1</sup> 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

This DMS monitoring report summarizes OSEP's review of IDEA Part C requirements regarding these monitoring priorities and components. OSEP conducted an onsite visit with representatives from the State's

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

lead agency (LA), the Kentucky Department for Public Health (KDPH),<sup>2</sup> including staff from the Kentucky Early Intervention System (KEIS), during the month of May and conducted an onsite visit May 1-5, 2023. In addition to staff interviews, OSEP reviewed publicly available information, policies and procedures, training flyers, data files, dispute resolution case information, findings, reports, child specific documents, model forms, service agreements and notifications sent to families and providers and other related documents KEIS submitted to OSEP. Finally, OSEP solicited feedback from various groups of interested parties and local level staff to gather a broad range of perspectives on the State’s system of general supervision.

Based on its review of available documents and information, including interviews conducted, OSEP has identified eight findings of noncompliance with IDEA requirements described in further detail in the monitoring report, including any required actions.

Finally, OSEP has not identified any noncompliance with the data component, therefore this 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 the implementation of the IDEA requirements by all early intervention service (EIS) programs or providers 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**

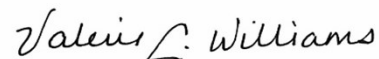
<b>MONITORING COMPONENT</b>	<b>FINDINGS SUMMARY</b>
1. Monitoring and Improvement	<p>1.1 OSEP finds that the State is not completing the initial evaluation, initial assessments of the child and family, and the initial individualized family service plan (IFSP) meeting within the 45-day timeline requirements under 34 C.F.R. § 303.310 (post-referral timeline).</p> <p>1.2 OSEP finds that the State is not ensuring 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>1.3 OSEP finds that the State is not ensuring that early intervention services needed by the child, are identified on the IFSP based on the unique needs of the child and family as required by 34 C.F.R. §§ 303.13(c) and 303.344(d).</p> <p>1.4 OSEP finds that the State does not ensure that the State educational agency (SEA) and appropriate local educational agency (LEA) receive notification of any infants or toddlers with disabilities who are identified as potentially eligible for preschool services under IDEA Part B consistent with 34 C.F.R. § 303.209(b).</p>

<sup>2</sup> KDPH is the LA appointed by the governor to ensure the planning and implementation of the Part C Program. The Kentucky Early Intervention System (KEIS) within the department, which is part of the Early Childhood Development Branch within the Division of Maternal and Child Health, is responsible for oversight and grant management. Kentucky’s Part C program is commonly referred to as KEIS.

MONITORING COMPONENT	FINDINGS SUMMARY
<p>2. Fiscal Management: Single Line of Responsibility</p>	<p>2.1 OSEP finds that the State does not have a general supervision system reasonably designed to monitor its EIS programs or providers to ensure fiscal compliance with IDEA Part C, as required under 34 C.F.R. §§ 303.120, 303.205, and 303.700 and 303.704, and with the Office of Management and Budget’s (OMB’s) Circular Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance) 2 C.F.R. Part 200.</p>
<p>3. Dispute Resolution</p>	<p>3.1 OSEP finds that the State does not maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services as required under 34 C.F.R. § 303.431(b)(2)(i).</p> <p>3.2 OSEP finds that the State does not have a procedure for selecting mediators on a random, rotational, or other impartial basis as required under 34 C.F.R. § 303.431(b)(2)(ii).</p> <p>3.3 OSEP finds that the State’s written procedures do not ensure the selection of an impartial hearing officer and that the hearing officers possess knowledge of, and the ability to understand, IDEA Part C consistent with 34 C.F.R. § 303.435.</p>

OSEP appreciates the State’s continued efforts to improve the implementation of IDEA Part C and the development and implementation of a reasonably designed general supervision system which ensures compliance and improving results for infants and toddlers with disabilities. OSEP notes that having a consistent and transparent system for identifying and correcting noncompliance, particularly noncompliance that impacts the delivery of early intervention services in accordance with individualized family service plans, and dispute resolutions systems that protect the rights of parents, are essential elements to ensuring improved results for infants and toddlers with disabilities. If you have questions, please contact your OSEP State lead.

Sincerely,



Valerie C. Williams

cc: Part C Coordinator

Enclosure:

DMS Monitoring Report

Appendix

## MONITORING AND IMPROVEMENT

During OSEP's monitoring activities, OSEP and KEIS used the Integrated Monitoring and Sustaining Compliance and Improvement protocols to examine how KEIS implements its general supervisory responsibility, including how it uses dispute resolution to identify and correct noncompliance.

### Legal Requirements

#### *45-day Timeline*

States must ensure that if the child is determined eligible, the initial child and family assessment must be conducted, and the initial IFSP meeting must be held within 45 days of referral under 34 C.F.R. §§ 303.310 and 303.321. This timeline requires the following occur within 45 days of a child's referral: (1) any screening offered by the State; (2) the initial evaluation; (3) the initial child and family assessment; and (4) the initial IFSP meeting. The 45-day timeline requirement includes two allowable exceptions: (1) the child or parent is unavailable to complete one of the following — the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or (2) the parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the State LA or EIS provider to obtain parental consent.

#### *Service Provision*

As a condition of receiving assistance under Part C of the IDEA, each State must ensure that appropriate early intervention services are available to all infants and toddlers with disabilities and their families as required by 34 C.F.R. § 303.112.

Under 34 C.F.R. § 303.342(e), each State must ensure that Part C services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner and that each eligible infant and toddler with a disability has available early intervention services that are designed to meet his or her unique individual needs as identified by the IFSP team as required by 34 C.F.R. §§ 303.13(c), 303.342, and 303.344(d).

#### *Early Intervention Services*

As required in 34 C.F.R. § 303.344(d)(1)(ii)(B), the determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be—

- 1) Made by the IFSP Team (which includes the parent and other team members);
- 2) Consistent with the provisions in 34 C.F.R. §§ 303.13(a)(8), 303.26, and 303.126; and
- 3) Based on the child's outcomes that are identified by the IFSP Team as required in 34 C.F.R. § 303.344(c).

#### *Transition from Part C to Part B*

Under 34 C.F.R. § 303.209(b)(1)(i), for toddlers with disabilities who are exiting Part C and potentially eligible for Part B services, the LA must notify, not fewer than 90 days before the toddler's third birthday, the SEA and the LEA for the area where the toddler resides that the toddler on his or her third birthday will reach the age of

eligibility for services under IDEA Part B, as determined in accordance with State law. The transition notification to the LEA and SEA must include the child's name, date of birth, and parent contact information (name, home and email address, telephone number) as required in 34 C.F.R. §§ 303.209(b)(1)(i) and 303.401(d). As required under 34 C.F.R. §§ 303.344(h), transition from Part C services in the IFSP must include confirmation that LEA notification and other child find information has been transmitted to the LEA or other relevant agencies, as appropriate.

## **OSEP Analysis**

During discussions with OSEP, KEIS stated that it fulfills its general supervision responsibilities through onsite and virtual monitoring, data system analysis, SPP/APR indicator review, fiscal monitoring activities, dispute resolution, and annual determinations. KEIS also reported a general supervision system that includes a system of identifying and verifying the correction of noncompliance through pre-finding correction, corrective actions, and enforcement actions.

The State's early intervention system is comprised of 15 regional agencies, known as Points of Entry (POE). KEIS contracts with two local health departments (that jointly operate three POEs) and ten community mental health centers to fund the majority of POEs. One POE operates jointly through a community Mental Health Center and private hospital. Finally, the Office for Children with Special Health Care Needs, a state agency, operates the final POE.

POEs are responsible for all referrals, initial evaluations and assessments, eligibility determinations, service coordination, and child find activities. Over a thousand service providers, representing a variety of professional disciplines, provide early intervention services through contracts with the POEs. KEIS explained that they monitor the 15 POEs over a three-year cycle, with five POEs reviewed every year across different cycles.

While the State's monitoring schedule appears reasonable, OSEP noted the following deficiencies in the State's practices:

### ***45-day Timeline***

*The State is not completing the initial evaluation, initial assessments of the child and family, and the initial IFSP meeting within 45 days from the date the LA or EIS provider receives the referral of the child, as required under 34 C.F.R. § 303.310.*

During interviews, POE staff reported that they sometimes "stop" the 45-day timeline for a child if they suspect the child may have a hearing delay or autism diagnosis to pursue further specialized testing. In addition, staff stated that they pause counting on the 45-day timeline if they cannot receive the child's medical records from the doctor before the POE must complete the IDEA assessment. OSEP staff reviewed the State's 45-day timeline data from Federal fiscal year (FFY) 2018, FFY 2019, and FFY 2020 that reflected numerous cases that did not meet the 45-day timeline due to a delay in receiving medical records or completion of the child exam, which the POE excluded from the count of late evaluations and initial assessments within 45 days from referral.<sup>3</sup> Administering evaluation instruments, gathering information from other sources and reviewing medical records are required procedures for an evaluation under 34 C.F.R. § 303.321(b), however, exceptions to the 45-day timeline are limited under 34 C.F.R. § 303.310(b) to instances where the child or parent are

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<sup>3</sup> OSEP will review the State's Annual Performance Report for FFY 2022 submitted on February 1, 2023, for Part C Indicator 7, 45-day timeline data to ensure that the data submitted is consistent with the requirements of 34 C.F.R. § 303.310. If the data submitted is inconsistent with the requirements of 34 C.F.R. § 303.310 the data may be found not valid and reliable.

unavailable due to exceptional family circumstances, or the parent has not provided necessary consent despite documented repeated attempts by the LA or EIS provider to obtain consent. The State's current practice of "pausing" the 45-day timeline to gather records or conduct additional testing is inconsistent with 34 C.F.R. § 303.310.

### ***Service Provision***

*The State is not ensuring 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).*

IDEA requires that Part C services be provided as soon as possible after a parent provides consent under 34 C.F.R. § 303.342(e). The [KEIS Policy and Procedures Manual](#) (policy manual (2021)) states that initial IFSPs must be developed within 45 calendar days of the referral and that all services authorized on the initial IFSP and any new services on subsequent IFSPs must begin after five working days and no later than 30 calendar days of the date the parent gives consent for the services. During OSEP's monitoring visit, OSEP heard from multiple sources about delays and waitlists for IDEA Part C services.

Parents stated during interviews that the initial provision of services were significantly beyond the timelines outlined in KEIS policies and procedures. The State acknowledged the use of waitlists are incorporated into various aspects of its service delivery model when service providers are unavailable. The State includes in the policy manual (2021), beginning on p. 80, a process that includes the use of a document, the Early Intervention Service Availability Notice (FS-45), which is used to document when services identified on the IFSP are not available but does not acknowledge that delays in service provision beyond the State's identified 30 calendar day timeline are inconsistent with the Part C program requirements. KEIS and POE staff attributed the lack of service provider availability to insufficient staff and the long distances which must be traveled when some service providers provide services in rural locations. Several POE staff stated that in-person services included in an IFSP were often placed on a waitlist until a provider had availability.

### ***Early Intervention Services***

*The State is not ensuring that early intervention services needed by the child, are identified on the IFSP based on the unique needs of the child and family as required by 34 C.F.R. §§ 303.13(c) and 303.344(d).*

OSEP heard during interviews with parents, POE staff, and the KEIS staff, that decisions about the method and location for service delivery were not made by the IFSP team but were instead based on provider preference. Providers stated that the method for service delivery (i.e., virtual, in a clinical setting, or in the home) for services such as speech or occupational therapy were determined by the provider's service delivery preferences. Some providers only delivered services virtually for all children and families regardless of the child's assessed needs as determined by the IFSP team, other providers delivered services only in a clinical setting for all of the children and families they served, and others provided only in-person. In the majority of cases described to OSEP, decisions about the method for service delivery were not based on the needs of the child but rather by the preference of the service providers. Providers gave several reasons for only offering specific services in a particular setting, including a shortage of personnel, the location of the family, or individual provider caseloads. In a number of cases where the IFSP team, including the parent, requested a specific service or service delivery location to meet the identified needs of the child, when there was a perceived shortage of appropriately trained staff or availability of personnel to accommodate the request, the provider would drop the infant or toddler from their active caseload. In these cases, parents were told to either reapply for services or that the POE would contact the parent when the service was available. Parents and IFSP teams that agreed to the provider's preferred method of delivery generally received services for their child.

Parents said during interviews that they perceived advocating for a particular method of service delivery, as indicated on their IFSP, or asking too many questions would cause them to lose any opportunity for service delivery for their child. Parents stated they had this perception because of the time they had to wait for services initially, as described in the above situation, and the lack of options for service provision solely based on provider preferences. Parents stated that because POEs dropped them or placed them on waiting lists, agreeing to accept any available service, irrespective of their child's needs, or IFSP team decision, was the only way to receive any service. In addition, parents felt that acceptance of any IDEA service delivery method was preferable to receiving no services or having to reapply for services in those cases.

The State's practice, based on interview data from both providers and parents, which allows the provider's preference or availability of service providers to be the deciding factor on the delivery of IDEA services and not an IFSP team decision based on the needs of the child is inconsistent with 34 C.F.R. § 303.344(d)(1)(ii)(B)(1).

### ***Transition from Part C to Part B***

*The State does not ensure the LA notifies the SEA and the appropriate LEA to ensure a seamless transition for toddlers with disabilities turning three years old who are identified as potentially eligible for preschool services under Part B of the IDEA, consistent with 34 C.F.R. § 303.209(b).*

The policy manual (2021), p. 107, states that the LA, for transition notifications, must only notify the Kentucky Department of Education (KDE) of any children ages two or above. KEIS's procedures then indicate that KDE, rather than the LA, sends the list of children who are potentially eligible for special education services to the appropriate LEA. The policy manual (2021) includes the following on page 107:

...that the [State lead agency] SLA notifies the KDE of any children ages two (2) or above. The KDE sends the list of children who are potentially eligible for special education services to the appropriate LEA. It is important that all options, including a referral to the local school for Part B special education services, be considered and discussed with the family.

In interviews, KEIS staff confirmed that the transition notification is sent to the SEA, and that KEIS relies on the SEA to send the information to the appropriate LEA. During interviews, POE staff indicated that transition planning conferences were held; however, records that the State provided frequently indicated that the conferences did not include LEA representation. Based on discussions with the State about their data system, the Technology-assisted Observation and Teaming Support System (TOTS), it was clear that TOTS had a data entry field to indicate the date that the transition notification occurred, as required under 34 C.F.R. §§ 303.344(h), however OSEP noted that for the majority of the child records, the information regarding the transition notification date was blank.

Based on its review of available documents and interviews with KEIS staff, OSEP found that KEIS does not send timely notification of transition to the LEA, nor did the SEA confirm sending notification to the LEA. Although, the policies and procedures and the interagency agreement are facially consistent with IDEA Part C transition requirements found in 34 C.F.R. §§ 303.209(a)(3) and (b), the State is not implementing the transition notification process as described in its policies and interagency agreement. In addition, OSEP reviewed sample IFSPs which confirmed that the child find information was not transmitted by the LA to the LEA.



## Conclusions and Required Actions

### *Conclusions*

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:

- 1.1 The State is not completing the initial evaluation, initial assessments of the child and family, and the initial IFSP meeting within the 45-day timeline requirements under 34 C.F.R. §§ 303.310 (post-referral timeline).
- 1.2 The State is not ensuring 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).
- 1.3 The State is not ensuring that early intervention services needed by the child, are identified on the IFSP based on the unique needs of the child and family as required by 34 C.F.R. §§ 303.13(c) and 303.344(d).
- 1.4 The State does not ensure that the SEA and appropriate LEA receive notification of any infants or toddlers with disabilities who are identified as potentially eligible for preschool services under IDEA Part B consistent with 34 C.F.R. § 303.209(b).

### *Required Actions*

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

1. Updated policies and procedures documenting the State's process to ensure any screenings, initial evaluations and initial assessments of the child and family, and the initial IFSP meeting are completed within 45 days from the date the LA or EIS provider receives the referral of the child.  
34 C.F.R. § 303.310.
2. Updated policies and procedures documenting the State's process to ensure that that appropriate early intervention services are available to all 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).
  - a. A description of how KEIS or POEs will address situations when EIS providers are not available to serve infants and toddlers with disabilities or when there has been a delay or disruption in service provision.
  - b. Updated data and a description of the State's improvement activities for addressing its provider shortages for early intervention services for infants and toddlers with disabilities and their families in all areas of the State.
3. Updated policies and procedures documenting the State's process to ensure early intervention services needed by the child are identified on the IFSP based on the unique needs of the child and family, as required by 34 C.F.R. §§ 303.13(c) and 303.344(d).
4. Updated policies and procedures documenting the State's process for notifying both the SEA and appropriate LEA of any infants or toddlers with disabilities who are identified as potentially eligible for preschool services under IDEA Part B in a timely manner, consistent with 34 C.F.R. § 303.209(b).
  - a. Revised manual to reflect the notification to both the SEA and appropriate LEA.

- b. Updated version of the State’s interagency agreement with KDE documenting how it ensures notification of both the SEA and appropriate LEAs and ensuring a seamless transition for toddlers with disabilities turning three years old who are identified as potentially eligible for preschool services under Part B of the IDEA, consistent with 34 C.F.R. § 303.209(b).

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

1. Actual monitoring reports or updated data, and evidence of training, demonstrating that the State has implemented its revised policies and procedures and provided monitoring or other oversight of compliance with the 45-day timeline requirements in 34 C.F.R. §§ 303.310.
2. Actual monitoring reports or updated data, and evidence of training, demonstrating the State’s process to ensure that that appropriate early intervention services are available to all infants and toddlers with disabilities and their families in a timely manner, as required by IDEA 34 C.F.R. § 303.112 and 303.342(e).
3. Actual monitoring or data demonstrating, and evidence of training, that the State has implemented its revised policies and procedures and monitored or conducted other compliance oversight activities under 34 C.F.R. §§ 303.13(c) and 303.344(d) to ensure that determination of the appropriate setting for providing early intervention services, including any justification for not providing a particular early intervention service in the natural environment, is being made by the full IFSP team, including the parent or other members, not simply based on provider availability or preference.
4. Evidence such as actual monitoring documentation or data demonstrating that the State has implemented its revised policies and procedures and provided monitoring or other oversight of compliance under 34 C.F.R. § 303.209(b).
  - a. Sample transition notifications sent to both the SEA and LEA.
  - b. Sample trainings or memoranda provided to both the SEA and LEA.
  - c. Updated interagency agreement between the LA and the SEA.

## FISCAL MANAGEMENT

During OSEP's monitoring activities, OSEP and KEIS staff used the IDEA Part C single line of responsibility fiscal monitoring protocol to examine KEIS's role in specific fiscal areas, including the general supervision, monitoring, funding, interagency coordination, and other responsibilities in meeting the requirements under Part C of the IDEA.

### 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 Part C of the IDEA, including the payor of last resort requirements in 34 C.F.R. § 303.500, use of funds requirements in 34 C.F.R. § 303.501, and the system of payment policies in 34 C.F.R. § 303.510, 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 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. LAs must also monitor for IDEA Part C fiscal requirements including monitoring EIS providers for the use of Federal IDEA Part C funds and its distribution within the State as required by 34 C.F.R. §§ 303.120(a), and 303.205, as well as the coordination of all available funding sources as required by 34 C.F.R. § 303.120(b).

See Appendix I for a listing of additional legal requirements.

### OSEP Analysis

During OSEP's discussions with the State, KEIS described its fiscal monitoring process, including quarterly billing and desk audits that include a review of compliance with the fiscal requirements of IDEA. Since the pandemic, the audits are conducted through TOTS, which serves as the electronic early intervention record and provides a method for communication between early intervention service providers and KEIS. These virtual programmatic desk audits occur during a three-year cycle that includes five POEs yearly. POEs are required to submit hard copy documentation to verify the information documented in TOTS. Although the desk audits are primarily programmatic, they do include file reviews of the following IDEA Part C fiscal requirements: 34 C.F.R. §§ 303.500 (use of funds, payor of last resort, system of payments); 303.501 (permissive use of funds); 303.510 (payor of last resort); 303.520 (use of public benefits or private insurance); and 303.521 (system of payments). In addition, the Early Childhood Branch Manager and a budget analyst in the Division of Maternal and Child Health conduct a monthly review of invoices submitted by POEs to ensure that the invoices are consistent with approved expenses in the POE contract. The LA's review is limited to confirming that services listed on invoices are identified as potential services in the provider contracts. However, Early Childhood Branch personnel reported that neither KEIS nor its contracted POEs conduct additional fiscal monitoring of providers.

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

*The State does not have procedures and practices that are reasonably designed to monitor its EIS providers to ensure fiscal compliance with IDEA Part C, as required under 34 C.F.R. §§ 303.120(a)(1) and (2), 303.205, 303.700, and with the OMB Uniform Guidance in 2 C.F.R. Part 200.*

While KEIS conducts some monitoring of the IDEA Part C fiscal requirements through its desk audits and the monthly billing reviews, staff were unable to describe or document procedures, activities, and reports demonstrating a system of fiscal monitoring that is reasonably designed to ensure compliance with fiscal requirements of both IDEA and the cost principles identified in the OMB Uniform Guidance. For instance, while invoices are reviewed to ensure that listed service charges are aligned to services identified under appropriate contracts, the State did not identify any practices designed to ensure that invoices are generally accurate descriptions of the services provided or that appropriate separation of duties occurs at the provider or POE level prior to the submission of invoices. The State did not provide evidence or describe oversight processes used by the LA to monitor the use of Federal funds to ensure that expenses comply with the general cost principles of the OMB Uniform Guidance at 2 C.F.R. Part 200.

### **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:

- 2.1 The State does not have a general supervision system reasonably designed to monitor its EIS programs or providers to ensure fiscal compliance with IDEA Part C, as required under 34 C.F.R. §§ 303.120, 303.205, 303.700 and 303.704, and with the OMB Uniform Guidance in 2 C.F.R. Part 200. Specifically, the State's monitoring system is not reasonably designed to ensure compliance with the cost principles under the Uniform Guidance.

### ***Required Actions***

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

- Revised fiscal monitoring policies and procedures that demonstrate how the LA will provide oversight of the EIS providers' use of IDEA Part C funds as required under 34 C.F.R. §§ 303.120, 303.205, 303.700 and 303.704 and the OMB Uniform Guidance in 2 C.F.R. Part 200.

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:

- Evidence of the State's monitoring of its EIS providers' use of IDEA Part C funds such as, fiscal monitoring reports, and local EIS provider budgets, and fiscal data system procedures/screenshots, demonstrating the system's capacity for oversight of Federal IDEA Part C funds and implementing internal controls.

## DISPUTE RESOLUTION

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

### 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. §§ 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. §§ 303.435 through 303.438.

### *Qualified Mediators*

Under 34 C.F.R. § 303.431(b)(2)(i), the State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. In addition, the LA must select mediators on a random, rotational, or other impartial basis as required under 34 C.F.R. § 303.431(b)(2)(ii).

### *Hearing Officers*

At a minimum, under 34 C.F.R. § 303.435 a hearing officer must be impartial and must not:

- (i) Be an employee of the LA or the EIS provider that is involved in the provision of early intervention services or care of the child; and
- (ii) Have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

The 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. 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 under Part C.

See Appendix I for a listing of additional legal requirements.

### OSEP Analysis

OSEP engaged in virtual and on-site discussions with State staff regarding Kentucky's dispute resolution system. KEIS contracts with the State's Office of the Ombudsman who provides all dispute resolution services. During our discussion with KEIS, the Office of the Ombudsman was not present, but KEIS reviewed their policies and procedures, program administration, program structure, and program data for dispute resolution with OSEP staff. During the discussions, OSEP covered three main topics as they relate to the State's dispute

resolution system including: the State's mediation, due process, and State complaint procedures. To prepare for discussions with the State on their dispute resolution provisions, OSEP reviewed the policy manual (2021), KEIS general supervision guide, KEIS Service Agreement, KEIS Parent Rights Handbook, Doing Business with KEIS: Enrollment, Documentation, & Billing Guide, Notice of Action, Notice of Confidentiality Privacy Practices and Rights, as well as copies of blank mediation, due process, and complaint forms. OSEP also reviewed redacted documents related to eight different State complaints. OSEP did not review any files for a mediation request or due process request as KEIS has not had any in at least the last three years.

During the discussion and the review of the above-listed documents, KEIS described the various ways parents are notified of their rights, including being provided the KEIS Parent Rights Handbook which describes in detail the Kentucky Dispute Resolution policy and procedures. KEIS also described the various ways it trains and supports early intervention providers to assist parents in understanding their rights under IDEA.

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

### ***Mediation***

*The State does not maintain a list of individuals who are qualified mediators or have policies or procedures to ensure that mediators are selected on a random, rotational, or other impartial basis consistent with 34 C.F.R. § 303.431.*

During OSEP's discussions with the State, KEIS staff described their dispute resolution procedures, and they were not able to articulate any practices that the Office of Ombudsman has in place to ensure mediators have IDEA-specific training or how they are selected on a random, rotational, or other impartial basis. KEIS stated that they do not know if mediators have been trained in specific IDEA Part C requirements, nor do they maintain a list of trained mediators as required under 34 C.F.R. § 303.431(b)(2)(i). In addition, the KEIS staff did not know how the Office of the Ombudsman ensures the impartiality of its mediators as required under 34 C.F.R. § 303.431(c). When asked to provide evidence of policy, procedures, and training from the Office of the Ombudsman, OSEP received three documents after our visit; an Anti-Harassment and Discrimination Form, two announcements for training offered in 2019, and another announcement from 2023. None of these documents showed evidence of training in IDEA Part C requirements, nor how the State ensures impartiality.

Under 34 C.F.R. § 303.431(b)(2)(i) and 34 C.F.R. § 303.431(b)(2)(ii) if mediation is requested, the State must have in place a list of qualified and impartial mediators and a method for selecting them on a random, rotational, or other impartial basis.

### ***Hearing Officers***

*The State does not have hearing officers knowledgeable in laws and regulations relating to the provision of early intervention services consistent with 34 C.F.R. § 303.435(a) or written procedures to ensure the impartiality of the hearing officer as required by 34 C.F.R. § 303.435(b).*

During OSEP's discussions with the State, KEIS staff described their dispute resolution procedures and they were not able to articulate any practices that the Office of Ombudsman uses to ensure access to hearing officers who are knowledgeable in the provisions of IDEA Part C as required under 34 C.F.R. § 303.435(a). KEIS staff also did not know how the Office of the Ombudsman ensures the impartiality of its hearing officers when appointed as required under 34 C.F.R. § 303.435(b). None of the State's documents showed evidence of training in IDEA Part C requirements, nor how the State ensures impartiality.

Under 34 C.F.R. § 303.435, if due process is initiated, the State must have access to hearing officers who are knowledgeable in the provisions of IDEA Part C and the needs of, and early intervention services available for,

infants and toddlers with disabilities and their families. Further, the hearing officer must be impartial, not be an employee of the LA or an EIS provider involved in the provision of Part C early intervention services or care of the child and must not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

The State was not able to provide evidence that it had a written process for training hearing officers in IDEA, nor a procedure for ensuring the selection of impartial hearing officers consistent with 34 C.F.R. § 303.435.

## **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 stakeholders. Based on this analysis, OSEP finds that:

- 3.1 The State does not maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services as required under 34 C.F.R. § 303.431(b)(2)(i).
- 3.2 The State does not have a procedure for selecting mediators on a random, rotational, or other impartial basis as required under 34 C.F.R. § 303.431(b)(2)(ii).
- 3.3 The State's written procedures do not ensure the selection of an impartial hearing officer and that the hearing officers possess knowledge of, and the ability to understand, IDEA Part C consistent with 34 C.F.R. § 303.435.

### ***Required Actions***

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

1. A list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services as required under 34 C.F.R. § 303.431(b)(2)(i).
2. Policies and procedures that detail the State's training activities and assurance that their mediators are knowledgeable on the IDEA Part C regulations relating to the provision of early intervention services as required under 34 C.F.R. § 303.431(b)(2)(i).
3. Policies and procedures that detail how the State will select mediators on a random, rotational, or other impartial basis as required under 34 C.F.R. §§ 303.431(b)(2)(ii).
4. Written procedures that ensure that the hearing officers are knowledgeable in the provisions of IDEA Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families and that the hearing officers appointed are impartial as required by 34 C.F.R. § 303.435.

## APPENDIX

### Monitoring and Improvement Legal Requirements

In order to effectively monitor the implementation of IDEA (or the Act) 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 the programs and providers receive 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 Part C of the Act, 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 lead agency 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 Part C of the Act; and (2) 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 Part C of the Act. 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 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 in 34 C.F.R. §§ 303.435 through 303.438.

## ***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 Part C of the Act 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 Part C of the Act 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 the Act. 34 C.F.R. § 303.438.