DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT

OFFICE OF SPECIAL EDUCATION PROGRAMS

U.S. DEPARTMENT OF EDUCATION

STATE	**ARKANSAS**
DATE	SEPTEMBER 28, 2023
IDEA	PART B
CONTENTS	

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

DIRECTOR

September 28, 2023

By Email

Honorable Jacob Oliva
Secretary of Education
Arkansas Department of Education
Four Capitol Mall, Room 304-A
Little Rock, Arkansas 72201

Email: jacob.oliva@arkansas.gov

Dear Secretary Oliva:

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, 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 process[1], 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: Subrecipient Monitoring
- Dispute Resolution
- Significant Disproportionality

This DMS monitoring report summarizes OSEP's review of IDEA Part B requirements regarding these monitoring priorities and components. OSEP conducted phone interviews with representatives from the Arkansas Department of Education (ADE) during January 2021 for the fiscal management component, and August through October 2022 for the monitoring and improvement, data, dispute resolution and significant disproportionality components. OSEP conducted DMS monitoring virtually on November 7-9, 2022. The interviews included staff from ADE's Office of Special Education. In addition to staff interviews, OSEP reviewed publicly available information, policies, procedures, and other related documents ADE submitted to OSEP. Finally, OSEP solicited feedback from various groups of stakeholders and local level staff in order to gather a broad range of perspectives on the State's system of general supervision.

[1] For additional information on DMS, see Resources for Grantees — DMS.

Based on its review of available documents and information and interviews conducted, OSEP has identified one finding of noncompliance with IDEA requirements at the conclusion of our monitoring activities. OSEP is making the following finding, listed below, and described in more detail further in the monitoring report, including any required actions. In addition, while OSEP did not identify any noncompliance in the significant disproportionality component, OSEP identified an area of concern and is making recommendations in that component, as explained in the narrative below.

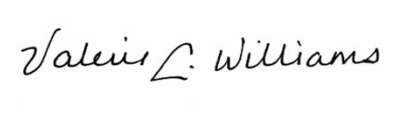
OSEP has not identified any noncompliance in the data, fiscal management and dispute resolution components; therefore, these sections are not included in the narrative below. OSEP's review of monitoring priorities and components of general supervision did not include the implementation of the IDEA requirements by all local educational agencies (LEAs) within your State, and OSEP cannot determine whether the State's systems are fully effective in implementing these requirements without reviewing data at the local level.

Summary of Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDINGS SUMMARY
1. Monitoring and Improvement	1.1 OSEP finds the State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.

We appreciate your efforts to ensure compliance and improve results for children with disabilities. If you have any questions, please contact your OSEP State Lead.

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs

cc: Part B State Director

Enclosure:
DMS Monitoring Report
Appendix

MONITORING AND IMPROVEMENT

During OSEP's monitoring activities, OSEP and ADE staff discussed the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocols, which are used to examine how ADE implements its general supervisory responsibility, including policies and procedures to identify and verify correction of noncompliance and improve educational results and functional outcomes for all children with disabilities.

Legal Requirements

In order to effectively monitor implementation of Part B of the IDEA, as required by 34 C.F.R. §§ 300.149 and 300.600 through 300.602, the State must monitor the improvement of educational results and functional outcomes for all children with disabilities, and must ensure compliance with the IDEA, Part B requirements.

The Part B regulations in 34 C.F.R. § 300.600(e) require that, in exercising its monitoring responsibilities under 34 C.F.R. §§ 300.149 and 300.600(d), the State must ensure that when it identifies noncompliance with the requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. As explained in OSEP's Question and Answer document 23-01, State General Supervision Responsibilities under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (Jul. 24, 2023)[2] (OSEP QA 23-01), in order to demonstrate that previously identified noncompliance has been corrected, a State must verify that each LEA with noncompliance is: (1) correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data and information, such as data and information subsequently collected through integrated monitoring activities or the State's data system (systemic compliance); and (2) if applicable, has corrected each individual case of child-specific noncompliance, unless the child is no longer within the jurisdiction of the LEA, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance). See OSEP QA 23-01, Question B-10.

In addition, under 34 C.F.R. §§ 300.149, States must issue a written notification of noncompliance (i.e., a finding) to the relevant LEAs, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time that the LEA has violated an IDEA requirement, unless the LEA (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction (see OSEP QA 23-01, Questions B-11 and B-12).

See Appendix for a listing of additional legal requirements.

[2] On July 24, 2023, OSERS issued OSEP QA 23-01, State General Supervision Responsibilities Under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement which incorporated longstanding policy and superseded the following three previously issued guidance documents: Frequently Asked Questions Regarding Identification and Correction of Noncompliance and Reporting on Correction in the SPP/APR (Sep. 3, 2008); OSEP Memorandum 09-02: Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act (Oct. 17, 2008); and Questions and Answers on Monitoring, Technical Assistance, and Enforcement (Revised Jun. 2009). Although the monitoring activity with the State occurred prior to issuance of OSEP QA 23-01, this monitoring report includes citations to OSEP QA 23-01, for ease of reference and clarity, as the specific requirements we are referencing from OSEP QA 23-01 are longstanding policy and have not changed.

OSEP Analysis

During discussions with OSEP, ADE stated that it fulfills its general supervision responsibilities through a tiered monitoring and technical assistance system, which includes a focus on results. ADE reported that it begins the monitoring process by using a risk checklist to evaluate every local educational agency (LEA) annually to determine the level or tier of monitoring an LEA requires, e.g., using a self-assessment, onsite, desk review, or virtual monitoring activity. ADE reported that it monitors a quarter of its LEAs each year to complete monitoring, over a four-year cycle, of all 280-plus LEAs, including charter school LEAs. The Division of Youth Services, Corrective Education, School for the Deaf, School for the Blind, Conway Human Development Center, and any LEAs during their second year of operation are always monitored by ADE on-site as part of ADE's four-year cycle.

The risk checklist used by ADE covers various data points, including the existence of past corrective actions, changes in LEA administration, dispute resolution activity, and LEA determination data. ADE reported that, based on the State-established criteria, LEAs identified as high-risk receive varied support consistent with the identified areas of risk, which could include on-site monitoring.

ADE reported that the first component of the four-year tiered monitoring cycle is the self-monitoring activities. All LEAs participate in self-monitoring activities during their designated cycle. Self-monitoring allows LEA and school staff to review their program data, self-identify strengths and needs, and build capacity to ensure compliance and improvement.

ADE explained that the second and third tiers include targeted monitoring activities for specific areas of need. Tier 2 and 3 activities include clarifying questions or additional documentation that may be required after ADE assesses Tier 1 data. For example, ADE may identify a group of LEAs to participate in monitoring and technical assistance activities specific to their performance on IDEA Part B SPP/APR indicators. ADE may also identify LEAs to participate in off-cycle monitoring activities based on needs identified through State complaints, due process hearings, or other concerns that ADE has identified.

ADE explained that the fourth tier of the monitoring system is a comprehensive on-site, results-driven monitoring process that ADE completes with LEAs determined to be at high risk based on the risk checklist tool. During the monitoring visit, ADE staff will review folders, observe classrooms, interview stakeholders, and review other documents required as part of the monitoring process.

State's Current Process for Notifying LEAs of Monitoring and Identification of Noncompliance

During OSEP's monitoring visit, ADE staff explained that the State notifies LEAs selected for monitoring and identifies and issues findings of noncompliance. ADE shared documentation of ADE's monitoring cycle and activities, and the ADE Special Education Monitoring Manual. ADE staff verbally communicated, and later confirmed in State-submitted documentation, that ADE includes three letters in its monitoring activities: a Letter of Notification, a Monitoring Review Letter, and a Letter of Findings. The first letter, a Letter of Notification, is sent to the LEA's Superintendent before ADE's monitoring, officially notifying the LEA that ADE has scheduled the LEA for monitoring. The second letter, a Monitoring Review Letter, is sent to the LEA's Superintendent 90 days after the completion of the monitoring activity, summarizing the information and data reviewed during monitoring and allowing for "pre-finding" correction. ADE's Special Education Monitoring Manual defines the Monitoring Review Letter as:

> A letter sent to the district's superintendent summarizing the information/data reviewed during monitoring, listing any potential areas of noncompliance, requesting corrections, outlining the next actions, and listing required additional documentation.

ADE also reported that, during a 90-day "verification period" (i.e., the time period for pre-finding correction) after the Monitoring Review Letter is sent, ADE reviews both student-level compliance and an updated set of data to verify the correction of any noncompliance identified in the Monitoring Review Letter. At the end of the 90-day verification period, if the LEA has not submitted sufficient evidence to correct the noncompliance, the LEA is issued a third letter, the Letter of Findings. ADE's Special Education Monitoring Manual defines the Letter of Findings as:

> The letter [ADE sends] after the verification period is complete. The letter states the final monitoring findings and includes a CAP [Corrective Action Plan] for any areas of noncompliance that exist.

ADE reported that the Letter of Findings is issued 180 days after the date of the official monitoring activity. ADE also reported that the Letter of Findings requires correction within one year from the date of the Letter of Findings.

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

The State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner. Under ADE's policies and procedures, a 90-day "verification period" (i.e., a period in which pre-finding correction can occur) begins with the issuance of the Monitoring Review Letter, 90 days after the completion of the monitoring activity; at the end of the verification period, ADE issues a written finding of noncompliance, as applicable. ADE's policies and procedures thus result in the issuance of any written findings of noncompliance 180 days after the completion of the monitoring activity, which is inconsistent with the requirement to issue a written notification of noncompliance (i.e., a finding) to the relevant LEA, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time that the LEA has violated an IDEA requirement, unless the LEA immediately (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction (see Questions B-11 and B-12). 34 C.F.R. §§ 300.149 and OSEP QA 23-01 Question B-7. In practice, ADE sometimes issued written findings of noncompliance even later than the 180 days after the completion of the monitoring activity, as prescribed by ADE's own policies and procedures.[3]

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:

1. The State does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602. Specifically, the State was not issuing its written notifications of noncompliance (i.e., a findings) to its LEAs, generally within three months of the State's identification of noncompliance. Further, the State may not use the "pre-finding" flexibility to allow its LEAs an indiscriminate amount of time to correct any noncompliance prior to a finding being issued. "Pre-finding correction" should generally occur within three months of the State's monitoring.

[3] In 13 of the 147 monitoring files OSEP reviewed, ADE issued written findings of noncompliance six months or more after the date of the Monitoring Review letter (i.e., nine months or more after the date of the monitoring activity).

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 its process for identifying noncompliance in a timely manner to include issuing a written notification of noncompliance (i.e., a finding) to LEAs, generally within three months of the State's identification of noncompliance unless the LEA immediately (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction.

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

1. Evidence of timely identification of noncompliance consistent with the State's updated policies and procedures for identifying noncompliance in a timely manner, generally within three months of the State's identification of noncompliance, including notification letters, evidence of integrated monitoring activities and letters of findings to its LEAs.

SIGNIFICANT DISPROPORTIONALITY

As part of the monitoring activity, OSEP staff reviewed the State's Significant Disproportionality Reporting Form submitted under Section V.B. of its FFY 2020 IDEA Part B grant application and the State's Maintenance of Effort Reduction and Coordinated Early Intervening Services (CEIS) data submitted under IDEA section 618. OSEP staff also reviewed available data on the State's 1) identification of children with disabilities by racial and ethnic group, 2) identification of children with disabilities in specific disability categories by racial and ethnic group, and 3) placements of children with disabilities into particular educational settings by racial and ethnic group.

During the onsite discussion with OSEP, ADE discussed the State's definition of significant disproportionality reported to OSEP in its FFY 2020 IDEA Part B grant application. ADE also discussed its stakeholder engagement activities and how those activities led to the State's definition of significant disproportionality. Specifically, ADE reported that it reviewed different minimum n-size and minimum cell size methodologies with different stakeholder groups, including parents, LEAs, and the State advisory panel. The State's current minimum n-size and minimum cell size fall within the presumptively reasonable range provided in 34 C.F.R. § 300.647(b)(1)(iv).

ADE reported it has established an early warning system for its LEAs regarding significant disproportionality. ADE posts all LEAs' significant disproportionality profiles on the State's website so that LEAs and the public can examine LEA data regarding significant disproportionality. All LEAs regardless of their significant disproportionality data can attend the State's annual significant disproportionality institute in which issues regarding equity, race, and significant disproportionality are explored. All LEAs that are identified with significant disproportionality are required to attend the State's disproportionality institute in which issues regarding equity, race, and significant disproportionality are explored.

During the monitoring activity, OSEP and ADE staff discussed the State's procedures and implementation of the requirements related to significant disproportionality. During the discussion, ADE staff explained the State's definition of significant disproportionality, including the information provided in the State's FFY 2020 IDEA Part B grant application. ADE also explained its stakeholder engagement process and its procedures for making annual determinations of significant disproportionality, including its mechanism for reserving the IDEA Part B funds required for comprehensive coordinating early intervening services (CCEIS). Finally, ADE and OSEP staff also discussed equity trends and issues occurring in the State.

Legal Requirements

States are required, under 34 C.F.R. § 300.646, to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. Under 34 C.F.R. § 300.647(b)(7), the State must report to the Department all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under 34 C.F.R. § 300.647(b)(1)(i)(A) through (D), and the rationales for each. Under 34 C.F.R. § 300.173, the State must have in effect, consistent with the purposes of Part B of IDEA and with section 618(d) of IDEA, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 C.F.R. § 300.8.

Except as provided in 34 C.F.R. § 300.647(d), the State must identify as having significant disproportionality based on race or ethnicity under 34 C.F.R. § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 34 C.F.R. § 300.647(b)(3) and (4) that exceeds the risk ratio threshold set by the State for that category. 34 C.F.R. § 300.647(b)(6). Where significant disproportionality is occurring, the State must provide for the annual review, and, if appropriate, revision of policies, procedures, and practices used in the identification, placement, or discipline of a child with a disability to ensure that they comply with the requirements of IDEA; require the LEA to publicly report on the revision of such policies, practices, and procedures; and require the LEA to reserve 15 percent of its IDEA Part B funds to provide CCEIS to identify and address the factors contributing to the significant disproportionality. 34 C.F.R. § 300.646(c) and (d).

See Appendix for a listing of additional legal requirements.

OSEP Analysis

During OSEP's monitoring activity, ADE also described its process for ensuring LEAs identified with significant disproportionality reserve IDEA Part B funds for CCEIS. IDEA Part B funds for CCEIS are reserved in the State's grant management system by State staff. ADE reported that each LEA identified with significant disproportionality must also complete and submit the Arkansas CCEIS Tool and CCEIS Application to the State. ADE explained that the CCEIS Tool guides LEA staff and their stakeholders through a systematic evaluation process that allows them to identify, and make a plan for addressing, the root cause or contributing factors of the significant disproportionality. ADE stated that once an LEA has utilized the tool, the LEA completes the Arkansas CCEIS Application in which the LEA summarizes the information from the completed tool. ADE stated that LEAs indicate in their CCEIS Application the contributing factors and root cause(s) identified for the significant disproportionality. ADE stated that an LEA's CCEIS Application also includes CCEIS program information and description, data management, the evaluation and monitoring of the program, and a CCEIS budget report. ADE reported that the CCEIS Tool and Application are reviewed and approved by ADE staff. The ADE Finance team monitors LEAs' CCEIS expenditures through the annual CCEIS Application process, while the ADE monitoring team ensures LEAs implement their CCEIS plans.

ADE was able to describe and demonstrate its system for identifying significant disproportionality and providing support to LEAs in meeting IDEA requirements. The State's written policies and procedures regarding significant disproportionality are contained in a document titled, Significant Disproportionality Comprehensive Coordinated Early Intervening Services Calculation Summary. This document provides the State's significant disproportionality calculation in detail and requires that LEAs that are found to have significant disproportionality must:

1. Complete the Arkansas CCEIS Tool in Excel;
2. Conduct a root cause analysis;
3. Submit the CCEIS application;
4. Budget 15 percent of the next year's Part B allocation for the provision of CCEIS to general education students and/or current special education students; and
5. Track and report students served in the Early Intervening module.

However, the document does not fully explain the State's complete process for identifying significant disproportionality. Specifically, the document does not include the required activities in 34 C.F.R. § 300.646(c) and (d) for LEAs identified with significant disproportionality.

Additionally, while ADE reviews the CCEIS Tool and CCEIS Application submitted by LEAs identified with significant disproportionality as described above, those reviews are completed by one person on ADE staff. This one ADE staff member conducts the reviews of, and provides final approval for, the CCEIS Tool and CCEIS Application submitted by LEAs identified with significant disproportionality.

Conclusion and Action Required

Although ADE has in effect written policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, as required under IDEA section 612(a)(24) and 34 C.F.R. § 300.173, those policies and procedures do not explicitly describe all of the required activities under 34 C.F.R. § 300.646(c) and (d) for LEAs identified with significant disproportionality and the relevant deadlines for completing those required activities. ADE's written policies and procedures should reflect in detail the State's practices regarding the type of activities required of LEAs identified with significant disproportionality and the related deadlines for those required activities, in order to increase transparency and LEAs' understanding of the State's implementation of the significant disproportionality requirements.

In addition, as a best practice to increase the comprehensiveness, accuracy, and objectivity in the State's implementation of its significant disproportionality requirements, no one person should have sole responsibility for conducting the review of and providing approval for the CCEIS Tool and CCEIS Application submitted by LEAs identified with significant disproportionality.

Recommendations

OSEP recommends that the State:

1. Revise its written policies and procedures regarding significant disproportionality to reflect the State practices related to timelines and deadlines for all required activities for LEAs identified with significant disproportionality; and
2. Establish a team of personnel responsible for conducting the review of, and providing approval for, the CCEIS Tool and CCEIS Application submitted by LEAs identified with significant disproportionality.

APPENDIX

Monitoring and Improvement Legal Requirements

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

1. Its general supervisory responsibility as required in 34 C.F.R. § 300.149.
2. Its monitoring responsibilities in 34 C.F.R. §§ 300.600 through 300.602, and
3. Its responsibility to annually report on performance of the State and of each LEA, as provided in 34 C.F.R. §§ 300.602(b)(1)(i)(A) and (b)(2).

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

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

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

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

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

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

Data Legal Requirements

To meet the data reporting requirements of IDEA sections 616 and 618 and 34 C.F.R. §§ 300.601(b) and 300.640 through 300.646, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

Fiscal Management Legal Requirements

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

Dispute Resolution Legal Requirements

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

1. The State complaint procedures requirements in 34 C.F.R. §§ 300.151 through 300.153;
2. The mediation requirements in 34 C.F.R. § 300.506; and
3. The due process complaint and impartial due process hearing and expedited due process hearing requirements in 34 C.F.R. §§ 300.500, 300.507 through 300.518 and 300.532.

Mediation

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

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

Under 34 C.F.R. § 300.506(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the SEA or the LEA that is involved in the education or care of the child and must not have a personal or professional interest that conflicts with the person's objectivity.

State Complaint Procedures

Under 34 C.F.R. § 300.151, each SEA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 300.153. Under 34 C.F.R. § 300.153, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations, including the facts on which the statement is based. Under 34 C.F.R. § 300.153(c), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Under 34 C.F.R. § 300.152(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an on-site investigation, if the SEA determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
    a. At the discretion of the public agency, a proposal to resolve the complaint; and
    b. An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA or of this part; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
    a. Findings of fact and conclusions; and
    b. The reasons for the SEA's final decision.

Under 34 C.F.R. § 300.152(b)(1), the State's procedures must permit an extension of the 60-day time limit only if:

1. Exceptional circumstances exist with respect to a particular complaint, or
2. The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 C.F.R. § 300.152(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

Due Process Complaint and Hearing Procedures; Resolution Process

Under 34 C.F.R. § 300.510(a), the LEA must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 300.511. Under 34 C.F.R. § 300.510(a)(3), the resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting; or the parties agree to use the mediation process described in 34 C.F.R. § 300.506.

Under 34 C.F.R. § 300.510(b)(1)–(2), if the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. Under 34 C.F.R. § 300.510(c), the 30-day resolution period may be adjusted to be shorter or longer if one of the circumstances identified in that paragraph are present. Under 34 C.F.R. § 300.515(a), the public agency must

ensure that not later than 45 days after the expiration of the 30-day resolution period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), a final decision is reached in the hearing; and a copy of the decision is mailed to the parties, unless, under 34 C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of either party.

Expedited Due Process Complaint and Hearing Procedures

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

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

Significant Disproportionality Legal Requirements

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

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

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

In determining whether significant disproportionality exists in a State or LEA the State must set a reasonable risk ratio threshold; reasonable minimum cell size; reasonable minimum n-size; and standard for measuring

reasonable progress if a State uses the flexibility described in 34 C.F.R. § 300.647(d)(2).
34 C.F.R. § 300.647(b). These standards must be based on advice from stakeholders, including State Advisory Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and are subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act.

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

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

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