Massachusetts Monitoring and Support Visit Summary and Next Steps
May 8-10, 2017

Area: Compliance	**DMS Designation: Targeted**

Background

In August 2014, the United States Government Accountability Office (GAO) issued a report entitled, Special Education - Improved Performance Measures Could Enhance Oversight of Dispute Resolution, examining the use of dispute resolution methods, including mediation and resolution meetings, since the 2004 reauthorization of the Individuals with Disabilities Education Act (IDEA).[1] Based on its conclusions, GAO recommended that the Secretary of Education direct the Office of Special Education Programs (OSEP) to revise its performance measure to collect information from States on the amount of time that extensions add to due process hearing decisions.

In response to this recommendation, OSEP conducted desk monitoring with States that reported 10 or more fully adjudicated hearings in a given year, where at least 75 percent of the decisions were issued within extended timelines. This included States where the decisions were reported as extended under 34 CFR §300.515(c), as well as those reported as resolved beyond the 45-day timeline but without allowable extensions. OSEP reviewed States' section 618 data for the 2012-2013 and 2013-2014 reporting periods. OSEP identified Massachusetts as a State that reported 10 or more fully adjudicated hearings with at least 75 percent of decisions issued within an extended timeline for those reporting periods. As a result, OSEP required desk monitoring and assigned the State a Targeted Differentiated Monitoring and Support (DMS) designation for Dispute Resolution.

To address the recommendation made by the GAO to conduct targeted monitoring related to extensions of due process hearing decisions, OSEP began this activity by having a phone call with Massachusetts on April 6, 2016 to discuss the review process and to request hearing logs for due process hearing decisions. The State submitted due process hearing logs, due process hearing decision files, and policies and procedures to OSEP via postal mail on April 27, 2016.

Purpose of Monitoring Activity

For FFY 2016, the State's DMS designation was Targeted in the area of Compliance. The primary factor prompting this designation was because OSEP had identified the State as having 10 or more fully adjudicated hearings with at least 75 percent of decisions issued within an extended timeline. The State reported that one hundred percent of Massachusetts' fully adjudicated hearings held in Federal fiscal year 2013 (2013-2014) were conducted within an extended timeline. As a result of the State's Targeted designation, OSEP is providing targeted monitoring and support to assist the State educational agency (SEA) in improving the State's dispute resolution system.

On May 8 through May 10, 2017, OSEP conducted an on-site monitoring review related to extensions of the 45-day timeline for issuing due process hearing decisions. IDEA requires that not later than 45 days after the expiration of the 30-day period described in 34 CFR §300.510(b), or the adjusted periods described in 34 CFR §300.510(c) a final decision is reached in the hearing and a copy of the decision is mailed to the parties. A hearing officer may grant a specific extension of the 45-day timeline at the request of a party to the hearing. 34 CFR §300.515(a) and (c).

Visit Summary

During the on-site visit, OSEP met with representatives of the State to obtain general information about the administration of the Massachusetts' dispute resolution system. OSEP conducted interviews with State officials, including staff from the Division of Administrative Law Appeals (DALA), Bureau of Special Education Appeals (BSEA), and Massachusetts Department of Elementary and Secondary Education (DESE). OSEP also

[1] http://www.gao.gov/products/GAO-14-390

reviewed selected provisions in The Commonwealth of Massachusetts, Division of Administrative Law Appeals, Bureau of Special Education Appeals, Hearing Rules for Special Education Appeals, February 2008 (hereafter referred to as Hearing Rules).

During the on-site visit, the following topics were discussed: (1) general supervision of the due process system, including general supervision of extension requests and implementation of due process hearing decisions; (2) the State's discovery rule; (3) the State's rule for moving a hearing off-calendar; (4) the State's rule governing expedited due process hearings; (5) the State's rule governing the Advisory Opinion process; and (6) State set-aside procedures and use of mediation for resolving State complaints. Although OSEP discussed Hearing Rule V regarding the Prehearing Conference while on-site, OSEP has determined that this rule is not inconsistent with Part B and therefore has not addressed it in this report.

General Organization

A May 2, 2017 memorandum from Edward McGrath, Chief Administrative Magistrate and Reece Erlichman, Director of the State's BSEA, addresses the State's current structure for their BSEA. While on-site, the State described the BSEA as a fully federally funded State agency that is an independent subdivision of the DALA, and explained that there is no crossover of duties between DALA's general jurisdiction central panel and the BSEA. The BSEA conducts mediations and due process hearings to resolve disputes arising under the IDEA. The BSEA is also charged with conducting hearings in cases brought under Section 504 of the Rehabilitation Act of 1973, and Massachusetts Local Education Agency assignment appeals. It is also noted that, at the request of a parent or public agency, the BSEA facilitates individualized education program (IEP) Team meetings, and as of 2016, the BSEA, through an Interdepartmental Service Agreement with the Massachusetts Department of Public Health, conducts Early Intervention due process hearings and mediations under Part C of the IDEA.

The BSEA maintains a website which provides descriptions of dispute resolution processes offered, forms, links to pertinent statutes and regulations, as well as a Pro Se Guide and a Pro Se Manual to assist unrepresented parties in navigating the hearing process. The BSEA employs six full-time equivalent hearing officers (who are attorneys), six mediators, a coordinator of mediation, a scheduling coordinator, administrative staff, and a director.[2]

1. General Supervision- Dispute Resolution System

Based on OSEP's review of documents and interviews with BSEA personnel, OSEP has determined that the State is not meeting its general supervisory responsibility with respect to due process hearings in the following two areas.

General Supervision of Extension Requests: Through on-site discussions, OSEP learned that the BSEA provides training to hearing officers regarding their authority to grant specific extensions of the 45-day timeline described in 34 CFR §300.515(a) at the request of a party in accordance with 34 CFR §300.515(c). However, the State confirmed during interviews with OSEP staff that neither the BSEA nor the SEA has procedures in place to ensure that hearing officers only grant extensions of the 45-day timeline for a specific period of time at the request of either party to the hearing. Rather, the State informed OSEP that the BSEA relies heavily on the hearing officers self-reporting the time periods of extensions through a hand written log, and there is no procedure for SEA review of this log. OSEP finds that the absence of State procedures in this area is inconsistent with the State's responsibility under 34 CFR §§300.149 and 300.600 to exercise general supervision over all educational programs for children with disabilities administered in the State to ensure that all such programs meet the education standards of the SEA and Part B requirements.

General Supervision of Implementation of Due Process Hearing Decisions: Based on discussions with the State during the on-site visit, OSEP determined that once the BSEA issues a due process hearing decision and that decision is not appealed, the SEA does not have procedures in place for ensuring that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner. Ensuring

[2] Memorandum to OSEP from Edward McGrath, Chief Administrative Magistrate; and Reece Erlichman, Director re: Bureau of Special Education Appeals (BSEA) May 2017 Site-Visit, May 2, 2017.

timely implementation of due process decisions is an essential part of establishing an effective due process and general supervision system. While the IDEA does not specifically prescribe State-established timelines for implementation of final due process decisions if the hearing officer does not specify a timeline for implementation in the hearing decision, consistent with section 615(i) of the IDEA and 34 CFR §300.514(a), all final due process decisions must be implemented within a reasonable period of time and without undue delay so that a child with a disability receives the services determined necessary to provide that child with the free appropriate public education to which he or she is entitled, but has been denied, under the IDEA. OSEP finds that the absence of procedures in this area is inconsistent with the State's responsibility under 34 CFR §§300.149 and 300.600 to exercise general supervision over all educational programs for children with disabilities administered in the State to ensure that all such programs meet the education standards of the SEA and Part B requirements.

2. Discovery Rule

Prior to the on-site visit, OSEP reviewed Hearing Rule VI.B., which provides for the use of discovery in due process hearings. The rule states that unless the case has been granted expedited status, formal requests for information may be made at any time after a request for hearing is filed and the resolution meeting, when required by 34 CFR §300.510(a), has been held or waived. Discovery may occur in the form of written questions (interrogatories), written requests for records (production of documents), or testimony under oath taken outside of a hearing (deposition). The party upon whom the request is served shall respond within a period of 30 calendar days unless a shorter or longer period of time is established by the Hearing Officer. The State informed OSEP that this 30-day period starts after the resolution period described in 34 CFR §300.510(b)(1) has concluded.

Despite IDEA's prehearing document disclosure rules in 34 CFR §300.512(a)(3) and (b), IDEA does not prohibit States from having discovery rules in their due process procedures. However, the State acknowledges that the 30 days permitted for discovery may lead to extensions of the IDEA 45-day timeline for issuing a hearing decision. Massachusetts's FFY 2013 and 2014 data demonstrate that all fully adjudicated hearing decisions were issued within extended timelines. Given the importance of promptly resolving disputes under Part B between parents and school districts, as explained in the Next Steps and Required Actions section of the Enclosure, OSEP is requesting that the State take follow up actions in connection with its discovery rule.

3. State Rule Permitting a Hearing to be Moved Off-Calendar

Based on OSEP's review of Hearing Rule IV, on-site interviews, and review of documents, OSEP has identified the following concerns regarding Hearing Rule IV. Hearing Rule IV provides that "the parties have the option of taking a hearing off calendar, but only by written agreement of the parties." Off calendar means all parties agree that: (a) the case shall remain open but that new hearing dates will not be scheduled until requested by one of the parties or required by the Hearing Officer; and (b) the timeline for issuing a final decision is extended by the number of days the matter is off calendar, plus an additional twenty (20) calendar days to provide time for the matter to be rescheduled for hearing. A hearing that is off calendar will be returned to the calendar and assigned specific dates for hearing upon the receipt of a written request from any party. However, three months from the date on which the parties agreed to have the case taken off calendar, the parties will be notified via an Order to Show Cause that the case will be dismissed without prejudice unless the BSEA is informed that the case is still active. If in response to the Order to Show Cause the parties indicate that the case is still active, yet they wish to have the case remain off calendar, the hearing officer may either: 1) extend the off calendar status for a period of time not to exceed three months; 2) schedule a hearing date and require the parties to go forward; or 3) dismiss the matter without prejudice. Six months after a case has been taken off calendar, the BSEA will schedule a hearing date and the parties shall proceed to hearing or the matter may be dismissed with prejudice.

Hearing Rule IV provides a process, beyond the normal extension process, that allows the parties to take a case off calendar. This rule permits the parties to delay the scheduling of a hearing for up to six months, and a hearing is only scheduled if either party requests that the matter be "put back" on the calendar. The provision in Hearing Rule IV.A. that if the hearing is scheduled, the timeline for issuing a final decision is extended by the number of days the matter is off calendar plus an additional 20 calendar days does not operate as a specific extension because the number of days the case is off calendar is unspecified. This Rule allows the parties to

delay issuance of the final decision for over six months, in the absence of a party's request for a specific extension of the 45-day timeline for issuing a final decision in the hearing. Following OSEP's on-site visit, the State provided via email on May 12, 2017, five examples of Off-Calendar Orders issued by four BSEA Hearing Officers between May 2009 and March 2017. OSEP's review of these orders revealed that no off-calendar order indicates whether the parties requested a specific period of time for an extension or the specific period of time that the hearing officer granted the extension to the hearing. Further, an on-site interview and the review of additional documents revealed that it is the responsibility of either party to request that the hearing be put back "on calendar" and/or rescheduled. Therefore, OSEP finds that this rule in its present form is inconsistent with the State's responsibility to ensure that decisions in due process hearings are reached and mailed to the parties within the 45-day timeline unless a hearing officer grants a specific extension at the request of a party to the hearing, as required by 34 CFR §300.515(a) and (c).

4. Expedited Due Process Hearings

Based on OSEP's review of Hearing Rule II.C governing expedited hearings, and on-site interviews, OSEP has identified the following concerns with respect to the State's implementation of requirements in IDEA section 615(k)(3) and 34 CFR §300.532 that govern expedited due process hearings.

Under Hearing Rule II.C.1.a, consistent with 34 CFR §300.532(a), the BSEA will grant an expedited hearing in matters relating to the determination of an appropriate educational program for an eligible special education student who has been subjected to disciplinary procedures: (i) when a parent disagrees with either a school district's determination that the student's behavior was not a manifestation of the student's disability, or any decision regarding placement in the discipline context; or (ii) when a school district asserts that maintaining the current placement of the student during the pendency of due process proceedings is substantially likely to result in injury to the student or others. In addition, under Hearing Rule II.C.1.b the BSEA will also grant a request for an expedited hearing when the person or entity requesting the hearing asserts that: (i) the health or safety of the student or others would be endangered by delay; or (ii) the special education services the student is currently receiving are sufficiently inadequate that harm to the student is likely; or (iii) the student is currently without an available educational program or the student's program will be terminated or interrupted.

Under Hearing Rule II.C.2, the party seeking an expedited hearing must state in the request why the party believes that expedited status should be granted, and under Hearing Rule II.C.3.b, the non-moving party must file its response to the hearing request and challenge to the sufficiency of the hearing request, if any, no later than five (5) calendar days after receipt of the hearing request. The hearing officer will respond to the sufficiency challenge within two (2) calendar days. Hearing Rule II.C.3.f also states that when expedited status is requested, the BSEA will consider which issues, if any, meet the criteria for an expedited due process hearing and will schedule only those issues on an expedited track.

OSEP's interviews with BSEA staff revealed that the BSEA will often unilaterally decide whether a due process complaint should be considered expedited. While it may be appropriate to make a determination of whether an expedited hearing must be held based on the allegations in the complaint, the hearing officer, and not the BSEA, must make that determination. See Q&A C-17 of OSEP's July 23, 2013 Questions and Answers on IDEA Part B Dispute Resolution Procedures. Further, when a parent or an LEA files a complaint on matters described in 34 CFR §300.532(a), 34 CFR §300.532(c)(1) provides that 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 CFR §§300.507 and 300.508(a) through (c), and 34 CFR §§300.510 through 300.514, except as provided in paragraphs (2) through (4) of 34 CFR §300.532(c). Therefore, it is inconsistent with this regulation for the parents or an LEA to be denied the opportunity for an expedited due process hearing on a matter described in 34 CFR §300.532(a). Further it is inconsistent with 34 CFR §300.532(c)(1) for a State to permit a party to challenge the sufficiency of an expedited due process complaint under 34 CFR §300.508(d), as contemplated in Hearing Rule II.C.3.b. See also Q&A E-6 of OSEP's July 23, 2013 Questions and Answers on IDEA Part B Dispute Resolution Procedures.

In addition, under Hearing Rule II.C.3.g, the moving party may make a written request to have a case moved from an expedited track to a regular track. This portion of the Rule is inconsistent with Part B, to the extent that it allows the moving party to request an extension of the expedited hearing timelines even in circumstances where the Act and implementing regulations specifically afford both parents and school districts the

opportunity for an impartial due process hearing on disciplinary matters that must be treated in an expedited manner.

Lastly, based on a review of sample due process hearing decisions and interviews with State personnel, OSEP determined that the State permits hearing officers to extend expedited due process hearing timelines at the request of a party, even though there is no provision permitting extensions to expedited due process hearing timelines. 34 CFR §300.532(c)(2)-(4) and Q&A E-7 of OSEP's July 23, 2013 Questions and Answers on IDEA Part B Dispute Resolution Procedures. OSEP reviewed one case which contained 269 days of extensions in a matter regarding a suspension, even though 34 CFR §300.532(c)(2) requires the SEA to ensure that the expedited due process hearing occurs within 20 school days of the date the complaint requesting the hearing is filed, and that the hearing officer make a determination within 10 school days after the hearing.

For the reasons outlined above, OSEP finds that portions of Hearing Rule II.C. related to expedited due process hearings are inconsistent with Part B.

5. The Advisory Opinion Process

Hearing Rule III.C. provides that one or both parties may submit a Request for an Advisory Opinion to the BSEA. The Advisory Opinion Process is voluntary, and therefore, consent of both parties is necessary in order to access the process. In order to commence the Advisory Opinion Process, a Request for an Advisory Opinion may be submitted either simultaneously with or after a Request for Hearing. A Request for an Advisory Opinion shall automatically constitute a request for a thirty (30) day postponement of any previously-scheduled hearing date. Upon receipt of a joint Request for an Advisory Opinion, or upon receipt of a non-requesting party's agreement to participate in the process, the BSEA shall simultaneously: (a) assign a Hearing Officer and schedule a date for the Advisory Opinion; and (b) schedule a Hearing date for a full hearing on the merits thirty (30) days subsequent to the Advisory Opinion date, with a different Hearing Officer. Hearing Rule III.C.4. provides that unless otherwise agreed by the parties, the Advisory Opinion is not binding and once it is completed the complaining party must notify the Hearing Officer in writing of the intention to proceed to hearing on the scheduled hearing date or withdraw the complaint.

If the parties agree to proceed to hearing once the Advisory Opinion is issued, OSEP is concerned that this State Hearing Rule would operate to permit a hearing decision to be issued outside of the 45-day timeline in the absence of an allowable extension. Further, it is the responsibility of the BSEA, and not the party who requested the Advisory Opinion to ensure that once a due process hearing request is made, a final decision is reached in the hearing within the 45-day timeline or a properly extended timeline. 34 CFR §300.515(a) and (c). Therefore, once the Advisory Opinion has been issued, it is impermissible for the hearing officer to require the party to ensure that the hearing is scheduled so that the decision is issued within an extended timeline. In addition, when parties access the Advisory Opinion process, the timeline for issuing a final hearing decision may not be unilaterally extended by the hearing officer, because such a practice is inconsistent with 34 CFR §300.515(c), which authorizes a hearing officer to grant a specific extension of the 45-day timeline only at the request of a party to the hearing. Therefore, OSEP finds that this rule in its present form is inconsistent with the State's responsibility to ensure that decisions in due process hearings are reached and mailed to the parties within the 45-day timeline or an allowable extension, as required by 34 CFR §300.515(a) and (c).

6. State Set-Aside Procedures and Use of Mediation for State Complaints

Although OSEP did not conduct a complete review of Massachusetts's State complaint procedures under 34 CFR §§300.151 through 300.153, OSEP identified noncompliance in the following two areas while on-site. During on-site interviews with State staff, the State informed OSEP of the process it uses once the State sets aside issues in a State complaint that are also the subject of a due process complaint as described in 34 CFR §300.152(c). These interviews revealed that the SEA does not have a mechanism for resolving issues through the State complaint process in accordance with the 60-day time limit and procedures described in 34 CFR §300.152(a) and (b) when the hearing officer dismisses the due process complaint or does not rule on the substance of the due process complaint. Rather, OSEP was informed that the SEA relies on the parties to the State complaint to notify them that the due process hearing did not address the issue. This practice is inconsistent with a State's responsibility under 34 CFR §300.151(a)(1) to resolve any signed, written complaint

that meets the requirements of 34 CFR §300.153. Therefore, when the State determines that a complaint resolution should be held in abeyance because of a due process hearing involving the same or similar issues, the State must have a process for determining whether the due process hearing that is the basis of the State's decision to hold the complaint in abeyance addressed all of the issues in the complaint. OSEP finds that the absence of procedures in this area is inconsistent with Part B. Rather, the State relies on the complainant to inform the State that all issues in the complaint have not been resolved through the due process hearing. This practice is inconsistent with the State's responsibility under 34 CFR §300.151(a) to resolve any complaint, including issues in complaints held in abeyance, that were not addressed in a due process hearing.

Next, interviews that OSEP conducted with BSEA staff also revealed that if the parent, or individual or organization, if applicable, and the public agency voluntarily agree to engage in mediation, the SEA automatically sets aside the complaint resolution and treats the mediation as the reason for extending the 60-day complaint resolution timeline even if the parties have not agreed to extend the timeline to engage in mediation. However, under 34 CFR §300.152(b)(1)(ii), the 60-day complaint resolution timeline can only be extended if the parties who voluntarily agree to engage in mediation have also agreed to extend the complaint resolution timeline. As explained in the response to Q&A B-23 of OSEP's July 23, 2013 Questions and Answers on IDEA Part B Dispute Resolution Procedures, the SEA may not treat mediation in and of itself as an exceptional circumstance that warrants extension of the 60-day timeline. Further, at any time that a party withdraws from mediation or withdraws agreement to the extension, the extension ends. 71 Fed. Reg. 46604 (Aug. 14, 2006). However, once the SEA has set aside a State complaint to allow for the parent, or individual or organization, if applicable, and the public agency to engage in mediation, if the mediation is not successful in resolving the dispute, and unless the parties have agreed to extend the timeline to engage in mediation, the State does not ensure that the complaint is resolved within 60 days after the complaint was filed, as specified in 34 CFR §300.152(a). Rather, it is incumbent on the complaining party to reopen or refile the State complaint. While it is not unreasonable for the SEA to require the complainant to notify the SEA that the mediation has not been successful, OSEP finds that it is inconsistent with the State's responsibility under 34 CFR §300.151(a) to require the complainant to reopen or refile the State complaint if mediation has not been successful in resolving the dispute.

Next Steps and Required Actions

OSEP will continue to be available to provide technical assistance via telephone to Massachusetts regarding administration of the State's dispute resolution system. In addition, OSEP will provide the State with targeted technical assistance with regard to: (1) the State's Advisory Opinion process; (2) the State's procedure for moving a hearing off-calendar; (3) expedited due process hearings; and (4) data reported under section 618 to ensure that reported dispute resolution data is consistent with applicable requirements.

Discovery Rule: As noted above, while IDEA does not prohibit States from having discovery rules, OSEP recommends that the State ensure that Hearing Rule VI does not operate to result in extensions of the 45-day hearing decision timeline. Recognizing the importance of promptly resolving disputes under Part B between parents and school districts, and in light of DESE's FFY 2013 and 2014 data demonstrating that all fully adjudicated hearing decisions were issued within an extended timeline, OSEP recommends that the State examine data on the percentage of extensions that are granted because of the length of the discovery period and in light of that data, consider whether Hearing Rule VI should be revised.

The State must also complete the Required Actions listed on the attached table.

Findings of Noncompliance	Corrective Action Required
1. **Finding of Noncompliance:** Based on the review of documents and interviews with State personnel, OSEP determined the State does not have procedures in place to ensure that hearing officers grant extensions of the 45-day timeline consistent with 34 CFR §300.515(c). Specifically, the State informed OSEP that it does not have procedures in place to ensure that hearing officers grant extensions of the 45-day timeline for issuing a final decision in a due process hearing in accordance with 34 CFR §300.515(c). **Citation:** Under 34 CFR §300.515(c), a hearing officer may grant specific extensions of time beyond the period set out in 34 CFR §300.515(a) at the request of either party. In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(A), the State must ensure that it is in compliance with the requirement that hearing officers grant specific extensions of the 45-day timeline for issuing final decisions in due process hearings at the request of a party to the hearing, and that each extension specifies either the length of the extension or the new date by which the hearing officer must mail the decision to the parties. (34 CFR §300.515(a) and (c)).	Within 90 days of the date of this letter, the State must provide documentation demonstrating that the State has established procedures to ensure compliance with the requirement that hearing officers grant specific extensions of the 45-day timeline for issuing final decisions in due process hearings at the request of a party to the hearing, which must specify either the length of the extension or the new date by which the hearing officer must mail the decision to the parties.
2. **Finding of Noncompliance:** Based on interviews with State personnel, OSEP determined that the SEA does not ensure that the public agency involved in the due process hearing implements the hearing officer's decision that is not appealed in a timely manner. Specifically, the State informed OSEP that it does not have procedures in place to ensure the implementation of a due process hearing decision that is not appealed. **Citation:** Under IDEA section 615(i) and 34 CFR §300.514(a), a decision in a due process hearing is final, except that a party to the hearing may appeal the decision. In a jurisdiction like Massachusetts that operates a one-tier due process system, a party aggrieved by the findings and decision made under §§300.507 through 300.513 and §§300.530 through 300.534 may appeal by bringing a civil action in an appropriate State or Federal court. 34 CFR §§300.514(a) and 300.516(a). Hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State as required by 20 U.S.C. 1415(f) and (i) and 34 CFR §§300.511-300.514. The SEA, pursuant to its general supervisory	Within 90 days of the date of this letter, the State must provide documentation demonstrating that the State has established procedures to ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner.

Findings of Noncompliance	Corrective Action Required
responsibility under IDEA sections 612(a)(11) and 616 and 34 CFR §§300.149 and 300.600 to ensure the provision of FAPE to all children with disabilities in accordance with applicable Part B requirements, must ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision.	
3. **Finding of Noncompliance:** Based on the review of documents and interviews with State personnel, OSEP determined that the State's hearing Rule IV, which allows parties to a hearing to move the hearing off calendar, in its current form, is inconsistent with 34 CFR §300.515(c). Specifically, the off calendar Rule permits parties to delay scheduling of a hearing for up to six months in the absence of a party's request for a specific extension of the 45-day timeline for issuing a final decision in the hearing in accordance with 34 CFR §300.515(c). OSEP finds that this rule in its present form is inconsistent with the State's duty to ensure that decisions in due process hearings are reached and mailed to the parties within the 45-day timeline unless a hearing officer grants a specific extension at the request of a party to the hearing, as required by 34 CFR §300.515(a) and (c). **Citation:** The 45-day timeline for reaching decisions in due process hearings described in 34 CFR §300.515(a) may only be extended if a hearing officer exercises the authority to grant a specific extension of time at the request of a party to the hearing. 34 CFR §300.515(c).	Within 90 days of the date of this letter, the State must provide: 1) Documentation demonstrating that the State has either removed Hearing Rule IV permitting a party to move a hearing off calendar or has revised Hearing Rule IV to ensure that it can be implemented in a manner that complies with the requirement that hearing officers grant specific extensions of the 45-day timeline for issuing final decisions in due process hearings at the request of a party that specifies either the length of the extension or the new date by which the hearing officer must mail the decision to the parties; and 2) A copy of the memo to be issued to all hearing officers, LEAs, parent advocacy groups and other interested parties advising them that the State either has removed the off calendar rule or has revised that rule to be consistent with the Part B regulations at 34 CFR §300.515(a) and (c) as described above.
4. **Finding of Noncompliance:** Based on the review of documents and interviews with State personnel, OSEP determined that the State is not ensuring that due process complaints filed pursuant to IDEA section 615(k)(3) and 34 CFR §300.532(a) are treated in an expedited manner for the following reasons: (i) under Hearing Rule II.C.3.f, the BSEA, and not a hearing officer, may determine whether the complaint should be treated as a request for an expedited due process hearing under 34 CFR §300.532(a); (ii) the BSEA may unilaterally deny a request for an expedited hearing involving a matter described in 34 CFR §300.532(a), even though 34 CFR §300.532(c)(1) specifies that a parent or an LEA must have an opportunity for an impartial due process hearing that must be treated in an expedited manner on matters described in 34 CFR §300.532(a); (iii)	Within 90 days of the date of this letter, the State must provide: 1) Documentation demonstrating that the State has revised Hearing Rule II.C. on Expedited Hearings to ensure that: (i) any due process complaint that meets the criteria described under 34 CFR § 300.532(a) will be treated as a request for an expedited due process hearing in accordance with the requirements in 34 CFR §300.532(c); (ii) the SEA will not unilaterally determine whether a complaint that meets the requirements in 34 CFR §300.532(a) can be treated as an expedited due process hearing; (iii) the portion of Hearing Rule II.C. permitting a party to challenge the sufficiency of an expedited due process complaint will be removed; (iv) the moving party will no longer be

Findings of Noncompliance	Corrective Action Required
Hearing Rule II.C.3.b permits a party to the hearing to challenge the sufficiency of the request even though the sufficiency provision in 34 CFR §300.508(d) does not apply to expedited due process complaints (34 CFR §300.532(c)(1)); (iv) under Hearing Rule II.C.3.g the moving party may request that a case be moved from an expedited track to a regular track, even though this provision could operate to prolong the time for deciding a dispute addressed in 34 CFR §300.532(a); and (v) hearing officers may grant specific extensions of the expedited hearing timeline specified in 34 CFR §300.532(c)(2) at the request of a party to the hearing, even though 34 CFR §300.532(c)(2) does not provide for extensions of expedited hearing timelines. **Citation:** Under IDEA section 615(k)(3) and 34 CFR §300.532(a), the parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§300.530 and 300.531, or the manifestation determination under 34 CFR §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 §§300.507 and 300.508(a) and (b). Under 34 CFR §300.532(c)(1), whenever a hearing is requested under §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 CFR §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in §300.532(c)(2) through (4). Under 34 CFR §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 CFR §300.532(c)(3), a resolution meeting must occur within 7 days of receiving notice of the due process complaint, unless the parties agree in writing to waive the meeting or to use mediation. Under 34 CFR §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 CFR §300.532(c)(3) (governing the resolution process), the State must ensure that the	permitted to request that a complaint involving matters described in 34 CFR §300.532(a) be moved from an expedited track to a regular track; and (v) the BSEA will ensure that hearing officers apply the timelines specified in 34 CFR §300.532(c)(2)-(3) to expedited due process complaints that meet the criteria described in 34 CFR §300.532(a) and will ensure that hearing officers will no longer grant specific extensions of the timelines specified in 34 CFR §300.532(c)(2) at the request of a party to the hearing. 2) A copy of the memo to be issued to all hearing officers, LEAs, parent advocacy groups and other interested parties advising them that the State has revised the expedited hearing rule to be consistent with the Part B regulations at 34 CFR §300.532, as described above.

Findings of Noncompliance	Corrective Action Required
requirements in §§300.510 through 300.514 are met.	
5. **Finding of Noncompliance:** Based on the review of documents and interviews with State personnel, OSEP determined that Hearing Rule III.C, which permits a party to a hearing to request an Advisory Opinion after the 45-day hearing timeline has commenced, operates as an automatic 30-day postponement of any previously scheduled hearing date. Specifically, when parties access the Advisory Opinion process simultaneously with or after a hearing has been requested, a hearing officer unilaterally grants a 30-day postponement of any previously scheduled hearing date in the absence of a party's request for a specific extension of the 45-day timeline for issuing a final decision in the hearing. Further, once the Advisory Opinion has been issued, it is the responsibility of the parties, and not the hearing officer, to ensure that the hearing is scheduled. **Citation:** The 45-day timeline for reaching decisions in due process hearings described in 34 CFR §300.515(a) may only be extended if a hearing officer exercises the authority to grant a specific extension of time at the request of a party to the hearing. 34 CFR §300.515(c).	Within 90 days of the date of this letter, the State must provide: 1) Documentation demonstrating that the State has revised Hearing Rule III.C. regarding the Advisory Opinion Process to ensure that if a hearing date has been established after a request for an Advisory Opinion has been made, the State has established procedures to ensure that the request for an Advisory Opinion is accompanied by a request from one or both parties for the hearing officer to grant a specific extension of the 45-day timeline for issuing a final decision in the due process hearing, and that after the Advisory Opinion has been issued, the hearing officer, and not the parties, is responsible for ensuring that a new hearing date is scheduled, unless a party withdraws the hearing request and a decision is issued within the required timeline in 34 CFR §300.515(a) and (c). 2) A copy of the memo to be issued to all hearing officers, LEAs, parent advocacy groups and other interested parties advising them that the State has revised Hearing Rule III.C. to be consistent with the IDEA Part B regulations, as described above.
6. **Finding of Noncompliance:** Based on interviews with State personnel, OSEP determined that once the State sets aside issues in a State complaint that are also the subject of a due process complaint in accordance with 34 CFR §300.152(c)(1), the SEA does not have a mechanism for resolving those issues, when the hearing officer dismisses the due process complaint or does not rule on the substance of the due process complaint. Specifically, the state does not apply the 60-day time limit and procedures described in 34 CFR § 300.152(a) and (b) to resolve the complaint. Rather, the SEA relies on the parties to the State complaint to notify them that the due process hearing did not address the issue. **Citation:** Under 34 CFR § 300.152(c)(1), if a due process complaint is filed on an issue that is also the subject of a pending State complaint, the State must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing officer issues a final decision. However, any issue in the State complaint that is not part of the due process	Within 90 days of the date of this letter, the State must provide: 1) Documentation demonstrating that the State has established (i) procedures to track when issues in a State complaint have been set aside because they are also the subject of a due process complaint, and (ii) a mechanism to ensure that the State resolves any remaining issues, when the hearing officer dismisses the due process complaint or does not rule on the substance of the due process complaint, using the 60-day time limit and procedures described in 34 CFR § 300.152(a) and (b); and 2) An analysis of the number of State complaints filed within one year of the date of this report where the SEA has set aside issues in the State complaint because the parties were engaged in due process and the SEA did not ensure that the issues were resolved through the due process complaint and hearing procedures. The State must also inform OSEP of the specific actions it will take, or has taken, to ensure that those

Findings of Noncompliance	Corrective Action Required
action must be resolved using the 60-day time limit and procedures described in 34 CFR §300.152(a) and (b).	complaints are resolved in accordance with procedures in 34 CFR §300.152(a).
7. **Finding of Noncompliance:** Based on interviews with State personnel, OSEP determined that the State has procedures that set aside a State complaint when the parties are engaged in mediation under 34 CFR §300.506, regardless of whether the parties have agreed to extend the 60-day complaint resolution timeline to engage in mediation. Further, once the SEA has set aside a State complaint to allow for the parties to engage in mediation, the State does not have a process to ensure that when mediation is not successful in resolving the dispute, the complaint is resolved within 60 days after the complaint was filed, as specified in 34 CFR §300.152(a). **Citation:** Under 34 CFR §300.152(b)(1)(ii), the 60-day time limit for complaint resolution may be extended only if (i) exceptional circumstances exist with respect to a particular complaint; and (ii) if the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to them under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 CFR §300.152(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State. The SEA may not treat mediation, in and of itself, as an exceptional circumstance under 34 CFR §300.152(b)(1)(i) that would warrant an extension of the time limit for complaint resolution. Rather, the parties engaged in mediation or other alternative means of dispute resolution, if available in the State, must agree to extend the time limit.	Within 90 days from the date of this letter, the State must provide: 1) Documentation demonstrating that the State has revised its State complaint procedures and practices so that if mediation is not successful in resolving a dispute, the State extends the 60-day timeline in 34 CFR §300.152(a) for complaint resolution only if the parties agree to extend the time to engage in mediation, consistent with 34 CFR §300.152(b)(1)(ii); procedures to track when a State complaint has been extended under 34 CFR §300.152(b)(1)(ii) when the parties are engaged in mediation; and a mechanism to ensure that when mediation is not successful in resolving the dispute, the complaint is resolved within 60 days after the complaint was filed, as specified in 34 CFR §300.152(a); and 2) The number of State complaints filed within one year of the date of this report where the SEA has set aside the State complaint because the parties were engaged in mediation and the SEA did not ensure that the issues were resolved. The State must also inform OSEP of the specific actions it will take, or has taken, to ensure that those complaints are resolved in accordance with 34 CFR §300.152.