



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

February 8, 2022

Honorable Jillian Balow
Superintendent of Public Instruction
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218
Jillian.Balow@doe.virginia.gov

Dear Superintendent Balow:

The U.S. Department of Education, Office of Special Education Programs (OSEP) is writing in response to the Virginia Department of Education's (VDOE or State) corrective action documentation submitted to OSEP on September 18, 2020, October 29, 2020, March 4, 2021, and December 21, 2021. Some of the information in this response is also based on a telephone meeting with the State on January 15, 2021. OSEP has carefully reviewed the documentation and information and determined that the State has not demonstrated correction of all the noncompliance identified in our June 23, 2020, Differentiated Monitoring and Support (DMS) monitoring letter (DMS letter). In the attached chart (DMS Response to State.VA.2.8.22) OSEP has detailed the outstanding issues, the previous required actions, a list of relevant documents submitted by Virginia, OSEP's analysis of those documents, OSEP's specific conclusions regarding correction, and what, if any, corrective actions, or additional next steps are appropriate to demonstrate correction.

As you are aware, our office continues to be contacted by multiple parents and other stakeholders in Virginia regarding the State's system of general supervision including, but not limited to, monitoring, due process, and policies and procedures governing independent educational evaluations (IEEs). While we understand that these communications only convey one side of often complicated situations, we remain concerned about the volume and nature of the concerns raised by these individuals and groups. Specifically, parents and other stakeholders have shared concerns about VDOE's compliance with its general supervisory responsibilities. Through this letter, we are providing notice that OSEP intends to engage further with the State on the following allegations:

- a. Whether LEAs are properly addressing consideration of extended school year (ESY) services.
- b. Whether, in certain situations, the maximum allowable charges for evaluations established by an LEA result in a denial of parents' rights to an IEE at public expense.

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- c. Whether LEAs are denying parental requests for IEEs without initiating a due process complaint to demonstrate the public agency's evaluation of the child is appropriate.
- d. Whether LEAs are ensuring all access rights to special education records.
- e. Whether Due Process Hearing Officers are refusing to open parents' (virtual) hearings to the public.
- f. Whether LEAs are providing all accommodations and services included in children's IEPs that are necessary for the provision of FAPE.
- g. Whether the State's complaint resolution process addresses allegations of systemic noncompliance occurring within LEAs.

In addition, in an email dated March 4, 2021, VDOE requested "written notification from OSEP explaining the foundation for restricting the Coordinator of Mediation from evaluating mediators through observation, given that the approach is permitted in other states under IDEA". VDOE has asked for clarification on OSEP's position regarding its mediation evaluation practices. As outlined in the attachment to this letter, OSEP remains concerned that the presence of an SEA employee during mediations can potentially affect the objectivity and professional interests of the mediator and that the SEA employee may be taking an active role in guiding the mediation itself-- which is prohibited under the IDEA. VDOE has not submitted any protocols, documentation, or other evidence to the contrary. To ensure that the mediation program is consistent with IDEA regulations, if Virginia intends to continue mediator evaluations that rely primarily on the presence of an SEA employee in the mediation sessions, then it must revise its mediation and mediator evaluation procedures to include and specify, at a minimum, the following:


- A requirement that mediation is conducted by only one individual.
- A requirement that the mediation evaluator is only present at the mediation session in an observatory role. No participation in the session is permitted.
- The frequency and duration of mediation evaluations.
- Prior written notice to parents participating in mediation sessions where a mediation evaluator will attend, stating that: Mediation is voluntary and parents may refuse to participate in mediation if they do not want the mediation evaluator to be present; the evaluator is an employee of the SEA; the evaluator will be present only to observe; and, the evaluator is prohibited from participating in the mediation.
- Parent exit surveys or other documentation demonstrating that the mediation evaluator was only present at the mediation sessions in an observatory role and did not participate.

As a reminder, the State must ensure this noncompliance is corrected as soon as possible, and in accordance with the timelines specified in the attached corrective actions. If VDOE anticipates difficulty in meeting the timelines including in the corrective actions attached, OSEP requests that the State provide a plan that includes projected dates for carrying out the required actions necessary to achieve full compliance.

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We thank you in advance for your prompt attention to this important matter. If you have any questions or would like to schedule a call to discuss OSEP's review and conclusions in this matter, please contact your OSEP State Lead, Koko Austin, at (202) 245-6720.

Sincerely,

A handwritten signature in cursive script that reads "Valerie Williams".

Director
Office of Special Education Programs

Attachment

cc: Samantha Hollins, Ph.D.
State Director of Special Education