



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

DIRECTOR

February 17, 2023

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:

This letter, and the accompanying chart, summarizes the current status of the outstanding findings from the Office of Special Education Program’s (OSEP’s) Differentiated Monitoring and Support (DMS) report issued on June 23, 2020. As detailed below, some findings are closed with no further action required. Some findings, remain open due to continued concerns around the documentation provided to date and information related to the required actions. Finally, through review of the submitted documentation, continued contacts from Virginia parents and advocates, and other sources of information that have come to the attention of our office, we have significant new or continued areas of concerns with the State’s implementation of general supervision, dispute resolution, and confidentiality requirements of Part B of the Individuals with Disabilities Education Act (IDEA). Appropriate policies and procedures for both oversight and compliance, and their implementation, are crucial to ensuring that children with disabilities and their families are afforded their rights under IDEA and that a free appropriate public education (FAPE) is provided. For this reason, as is discussed below, we are notifying you of OSEP’s plan to initiate additional monitoring activities focused on both the new and continued areas of concern and on the effective implementation IDEA requirements in these areas.

June 23, 2020 DMS findings: The chart below summarizes the current status of the findings from OSEP’s June 23, 2020 letter. Further details of OSEP’s analysis and next steps are found in the attached chart.

Finding	Status
CLOSED FINDINGS	
<p>GENERAL SUPERVISION: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all</p>	<p>Original finding is closed based on the submission documentation consistent with required actions.</p>

Finding	Status
<p>educational programs for children with disabilities administered within the State, to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA, as required by 20 U.S.C. §§ 1412(a)(11) and 1416(a), 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (b), 20 U.S.C. § 1232d(b)(3)(A) and (e), 34 C.F.R. § 300.600(e) and 2 C.F.R. § 200.332.</p>	<p>However, the consistent implementation of these practices and procedures remains an area of concern. Further, as noted in our September 1, 2022 letter, OSEP intends to continue to monitor the State’s implementation of its general supervision and monitoring system through State-reported data and has reserved the right to revisit the matter based on future, additional information OSEP may receive.</p> <p>OSEP intends to further investigate implementation of VDOE’s general supervision system in our additional monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>
<p>DUE PROCESS COMPLAINT AND HEARING PROCEDURES: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that:</p> <ol style="list-style-type: none"> 1. The State is not exercising its general supervisory and monitoring responsibilities in accordance with 20 U.S.C. §§ 1412(a)(11)(A) and 1416(a) and 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2) with regard to the following: <ol style="list-style-type: none"> a. VDOE does not ensure and document that LEAs track the implementation of the timelines for the resolution process for due process complaints filed by parents in 34 C.F.R. § 300.510 and for calculating the beginning and expiration of the 45-day due process hearing decision timeline in 34 C.F.R. 	<p>Closed.</p> <p>Findings 1 (a) and (b): No further action is required.</p>

Finding	Status
<p>§ 300.515(a), 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 a party to the hearing; and</p> <p>VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(e)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(e)(2) in order to properly track due process hearing decision timelines.</p>	
<p>MEDIATION: Based on the review of documents and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement a mediation process that is consistent with the requirements of 20 U.S.C. § 1415(e) and 34 C.F.R. § 300.506. Specifically, the State’s practice of having its mediation coordinator co-mediate when the mediator is new, and permitting its mediation coordinator to be present at the mediation sessions is inconsistent with the requirement in 34 C.F.R. § 300.506(e)(1) that the State’s procedures ensure that a mediator is not an employee of the SEA and has no personal or professional interest that would conflict with the mediator’s objectivity</p>	<p>Closed, no further action is required at this time.</p>
<p>OPEN FINDINGS</p>	
<p>GENERAL SUPERVISION: Additional Concern Provision of FAPE and Compensatory Services during the pandemic.</p>	<p><u>Additional Concern</u> As a result of the Office for Civil Rights’ (OCR) November 30, 2022 letter to Fairfax County, OSEP is concerned about the potential for similar issues in other LEAs in Virginia. OSEP intends to further investigate this issue in our additional monitoring activities and may require additional corrective</p>

Finding	Status
	actions based on new analyses and findings, if any.
<p>STATE COMPLAINT PROCEDURES: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State is not exercising its general supervisory and monitoring responsibilities to implement its state complaint resolution system in a manner consistent with all the requirements in 20 U.S.C. § 1412(a)(11)(A) and 1416(a) and 34 C.F.R. §§ 300.149 and 300.600 and 34 C.F.R. §§ 300.151 through 300.153 for the following reason:</p> <p>The State does not ensure that it resolves every complaint that meets the requirements of 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, specifically in the situation where the State has developed a communication plan with an individual parent-complainant.</p>	<p>Open.</p> <p>Further actions are required to close this finding. OSEP intends to further investigate compliance and implementation of State complaint procedures in our additional monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>
<p>DUE PROCESS COMPLAINT AND HEARING PROCEDURES: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that:</p> <ol style="list-style-type: none"> 2. The State is not exercising its general supervisory and monitoring responsibilities in accordance with 20 U.S.C. §§ 1412(a)(11)(A) and 1416(a) and 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2) with regard to the following: <ol style="list-style-type: none"> a. VDOE does not ensure and document that LEAs track the implementation of the timelines for the resolution process for due process complaints filed by parents in 34 C.F.R. § 300.510 and for calculating the beginning and expiration of the 45-day due process hearing decision timeline in 34 C.F.R. § 300.515(a), 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 a party to the hearing; and 	<p>Open.</p> <p>Findings 2-4: Further actions are required. For details see attached chart.</p> <p>OSEP intends to further investigate compliance and implementation of due process complaint and hearing procedures in our additional monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>

Finding	Status
<p>b. VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(e)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(e)(2) in order to properly track due process hearing decision timelines.</p> <p>3. Consequently, OSEP concludes that the State does not have procedures and practices that are reasonably designed to ensure a timely resolution process for due process complaints filed by parents or the timely adjudication of due process complaints that result in due process hearings, or a timely resolution process for expedited due process complaints, and the timely adjudication of expedited due process hearings.</p> <p>4. Because the State does not have a mechanism to reliably determine the date on which the 45-day due process hearing timeline in 34 C.F.R. § 300.515(a) commences, the State is unable to report valid and reliable data on the adjudication of due process complaints as required under Section 618(a)(1)(F) of IDEA.</p> <p>5. Because the State does not have a mechanism for reliably determining whether expedited hearing timelines are met, the State is unable to report valid and reliable data on expedited due process hearings in accordance with Section 618(a) of IDEA.</p>	
<p>INDIVIDUAL EDUCATIONAL EVALUATIONS (IEE): Based on a review of documents and interviews with State personnel, for the reasons set forth above, OSEP concludes that the provision of Virginia’s regulation, 8VAC20-81-170(B)(2)(a) and (e), are inconsistent with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, because the State’s regulation restricts a parent’s right to an IEE at public expense to only those areas in which the public agency had previously evaluated the child.</p>	<p>Open.</p> <p>Further actions are required to close this finding.</p> <p>In addition, OSEP intends to further investigate compliance and implementation of IEE procedures in our additional monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>

Additional Concerns around the implementation of general supervision, dispute resolution, and confidentiality requirements of IDEA. Based on substantial numbers of contacts from parents and other advocates, and additional information we have found in reviewing corrective actions for the 2020 monitoring findings, OSEP has identified significant concerns around the implementation of key requirements of IDEA that, while related to the 2020 findings, go beyond the scope of those findings. As a result, OSEP is notifying VDOE that we will undertake additional monitoring activities to address these concerns. We anticipate conducting these activities in August and/or September of 2023. A description of the areas of additional monitoring appears below.

1. *General Supervision procedures for the identification and correction of noncompliance:* General supervision is the primary mechanism for ensuring that all students in the State receive FAPE, no matter which school district they attend. OSEP appreciates the work that VDOE has undertaken to revise its monitoring procedures. However, to ensure that VDOE is fulfilling its general supervisory responsibilities under 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2), OSEP intends to examine the effective implementation of the revised policies and procedures and practices. At a minimum, OSEP intends to utilize the DMS 2.0 monitoring protocols for a systematic review of VDOE’s policies, procedures and practices for the identification and correction of noncompliance.

Provision of FAPE during the COVID-19 Pandemic and Compensatory Services: The negative impact on children with disabilities of school closures and other limitations on education during the COVID-19 pandemic has been both significant and disparate. The Department has issued guidance on ways to mitigate the significant impact through the provision of compensatory services. Many States have responded both positively and proactively to ensure that students with disabilities get back on track. OSEP is concerned that Virginia’s leadership and guidance in this area has been deficient and may have led to noncompliance by school districts.

On November 30, 2022, OCR issued a letter and resolution agreement resulting from its directed investigation of Fairfax County Public Schools. As a result of its investigation, OCR concluded that during the Covid-19 Pandemic, Fairfax County Public Schools failed or was unable to provide a FAPE to thousands of qualified students with disabilities in violation of Section 504 (Section 504) of the Rehabilitation Act of 1973. Although, OCR’s investigation was specific to Fairfax, the letter makes clear that Fairfax County Public Schools based their policies and practice at least partially upon guidance issued by VDOE.¹ Similarly, although OCR cited violations with Section 504, the policies and practices identified in this letter also appear to be inconsistent with IDEA. In addition, we are aware of State complaint decisions that were consistent with the policy and practices cited by OCR. Since the VDOE guidance was Statewide and because OSEP has received complaints from across the State about practices similar to those cited by OCR in Fairfax, OSEP will examine this matter.

¹ See, “Considerations for COVID Recovery Services for Students with Disabilities.”

2. *State complaint policies, procedures, and practices:* The appropriate and effective investigation and resolution of State complaints is a significant mechanism to both avoid resolve disputes and avoid costly and protracted hearings and litigation.

Through the review of State-submitted and publicly available documentation and information, and that provided by parents, OSEP has identified concerns with VDOE's State complaint systems that go beyond the concerns originally identified in our DMS letter. These include, VDOE's policies and practices for determining sufficiency of complaints consistent with 34 C.F.R. § 300.153(b), the conducting of investigation and issuing of a report that addresses each allegation in the complaint in accordance with 34 C.F.R. § 300.152(a)(5), meeting the timelines, including extensions, as specified under 34 C.F.R. § 300.152 (a and b), and procedures for the effective implementation of the SEA's final decision.

3. *Due process complaint and hearing procedures and implementation:* Since its inception, the IDEA has guaranteed a dispute resolution mechanism grounded in due process and providing parents with the ability to enforce IDEA's requirements for FAPE.

Through the review of State-submitted and publicly available documentation and information, and that provided by parents, OSEP has identified concerns with VDOE's due process complaint and hearing process that go beyond the concerns originally identified in our DMS letter. These include inconsistencies between State rules and IDEA (including 34 C.F.R. §300.515(c) which sets out that a hearing or reviewing officer only may grant specific extensions of time beyond the periods set out in §§300.515(a) and (b) at the request of either party), as well as practices, as documentation submitted does not demonstrate that hearing officers have granted extensions only at the request of either party.

4. *IEE policies, procedures, and practices:* A comprehensive educational evaluation is the cornerstone to determining whether a child is eligible under the IDEA and parents who believe that the public agency's evaluation of their child was either improper or incomplete have an important IDEA protection in the form of independent educational evaluation (IEE).

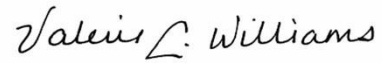
Through the review of State-submitted and publicly available documentation and information, and that provided by parents, in addition to the continuation of improper practices previously cited, OSEP also has identified at least five LEAs that have procedures or practices for IEEs that appear inconsistent with IDEA's regulations generally requiring the public agency to either fund the IEE (with an exception) or file a due process complaint to prove its evaluation was proper. 34 C.F.R. § 300.502(b)(2).

OSEP intends to provide additional information about our monitoring activities, additional work with VDOE staff, and scheduling in the near future.

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Thank you for your continued cooperation in ensuring the implementation of IDEA within Virginia. If you have any questions, please contact your State lead, Koko Austin at ayorkor.austin@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Valerie Williams". The signature is written in a cursive style with a large, stylized initial "V".

Valerie Williams

cc: Samantha Hollins, State Director of Special Education