



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

September 1, 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:

This letter addresses the Virginia Department of Education's (VDOE or State) corrective action submissions to the U.S. Department of Education, Office of Special Education Programs (OSEP) on September 18, 2020, October 29, 2020, March 4, 2021, December 21, 2021, January 25, 2022, and June 10, 2022. Some of the information in this response is also based on telephone meetings with the State on January 15, 2022, and April 20, 2022. These submissions and conversations are in response to OSEP's required actions under the following sections in OSEP's May 23, 2020, differentiated monitoring and support (DMS) report: a) Compliance; b) Dispute Resolution Procedures; and c) Independent Educational Evaluations (IEE).

OSEP's DMS report required VDOE to take the following corrective actions within 90 days from the date of the DMS report:

COMPLIANCE

A. General Supervision

VDOE must provide a written plan to OSEP that describes how it will ensure that all of its LEAs meet the requirements of Part B of IDEA. The State's plan must include a description of the steps VDOE will take to ensure that:

1. The State establishes and will implement general supervision and monitoring procedures and practices that are reasonably designed to ensure that LEAs meet IDEA's program requirements. The State's procedures and practices must ensure that the State's systems for review of LEA compliance data and other information are sufficiently comprehensive to identify noncompliance in a timely manner and ensure timely correction of any identified noncompliance consistent with the requirements in 20 U.S.C. § 1232d(b)(3)(A) and (E) and 34 C.F.R. § 300.600(e) and OSEP Memorandum 09-02 (OSEP Memo 09-02), dated, October 15, 2008.
2. Specifically, the State must revise its general supervision and monitoring system to include procedures and practices that are reasonably designed, as appropriate, to consider and address credible allegations of local educational agency (LEA) noncompliance in a timely manner.

3. The State must provide a copy of the notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that the State has revised its policies, procedures, and practices for general supervision and monitoring to be consistent with the required actions described above.

DISPUTE RESOLUTION PROCEDURES

B. State Complaint Procedures

1. State must submit to OSEP documentation demonstrating the State has established and will implement procedures and practices to ensure that the State resolves every complaint that meets the requirements in 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, even in a circumstance where the State develops a communication plan with an individual complainant.

C. Due Process Complaint and Hearing Procedures

1. Submit documentation demonstrating that the State has revised its dispute resolution procedures and practices and is implementing those revisions, to ensure that:
 - a. The State has a mechanism for tracking the timelines for the resolution process required under 34 C.F.R. § 300.510 to determine when: resolution meetings occur; the 30-day resolution period or the adjusted resolution period has concluded; and the 45-day hearing timeline commences.
 - b. The State has a mechanism for tracking the timelines for resolution meetings and the resolution period for expedited due process complaints in 34 C.F.R. § 300.532(c)(3) and for determining whether expedited due process hearings and determinations in those hearings occur within the timelines required in 34 C.F.R. § 300.532(c)(2); and
 - c. Hearing officers are receiving appropriate training allowing them to apply and track the resolution period timelines for all due process hearings.
2. Submit documentation demonstrating that the State has reviewed its due process hearing data collection processes and revised them, as necessary, to ensure that, consistent with the information set forth above, it will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA Section 618 dispute resolution data submission for due process hearings conducted pursuant to 34 C.F.R. §§ 300.511–300.515 and for expedited due process hearings conducted pursuant to 34 C.F.R. § 300.532 for the School Year 2020–2021 data collection. The reporting year for this data collection is July 1, 2020, through June 30, 2021.
3. Submit a copy of the notification to be issued to all hearing officers, LEAs, parent advocacy groups, and other interested parties advising them that the State has revised and is implementing procedures for tracking the timeliness of the resolution process and fully

adjudicated due process hearing decisions to be consistent with the required actions described above.

D. Mediation

1. Documentation demonstrating that the State has established revised procedures and practices, and is implementing those revisions, to ensure that the State’s mediation coordinator, an employee of the SEA, does not co-mediate and is not present during mediation sessions.
2. A copy of the notification to be issued to all LEAs, parent advocacy groups, and other interested parties advising them that the State has implemented revised procedures and practices that prohibit the attendance of any employee of VDOE at a mediation sessions.

E. Independent Educational Evaluations

1. Submit a written assurance to OSEP specifying that as soon as possible but in no case later than one year from the date of OSEP’s June 23, 2020’ DMS report, in accordance with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, the State will revise Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e) to, at a minimum, remove the word “component” following the word “evaluation.”
2. Submit to OSEP a copy of a memorandum that the State has issued to all LEAs, parent advocacy groups, and other interested parties instructing LEAs to comply with 20 U.S.C. 1415(b)(1) and 34 C.F.R. § 300.502(b) by also providing an IEE at public expense in areas where the LEA previously has not conducted its own evaluation, unless the LEA has demonstrated, through a due process hearing decision, that its evaluation is appropriate; and advising that the State will be revising Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e), to, at a minimum, remove the word “component” following the word “evaluation” in accordance with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502(b).
3. Upon completion of the changes to the Administrative Code, submit to OSEP documentation of the revisions.
4. Review and revise its policies, procedures, and practices regarding the IEE process, and require its LEAs to conduct a similar review of their policies, procedures, and practices, to ensure that pending revision of Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e):
 - a. VDOE and its LEAs do not limit a parent’s right to obtain an IEE at public expense to the areas of assessment or evaluation components that were previously conducted by the public agency; and
 - b. In a circumstance where a parent requests an IEE at public expense of their child in an area not previously assessed by the public agency, the public agency, without unnecessary delay, either:

- i. Initiates a hearing under 34 C.F.R. § 300.507 to show that its evaluation is appropriate; or
- ii. The public agency must ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 C.F.R. § 300.507 that the evaluation obtained by the parent did not meet agency criteria.

Upon reviewing the State’s submissions, OSEP has determined that VDOE has met the above required actions for the areas related to Mediation. No further action is required with respect to the finding.

With respect to General Supervision, OSEP has determined VDOE has submitted evidence of its revised general supervision and monitoring system in accordance with corrective actions and is closing this finding. OSEP will continue to monitor the State’s implementation of its general supervision and monitoring system through State-reported data and reserves the right to revisit the matter based on future, additional information OSEP may receive.

OSEP concludes that the State has not provided information to demonstrate it has corrected the identified noncompliance related to State Complaint Procedures, Due Process Complaint and Hearing Procedures, and Independent Educational Evaluations and those findings remain open, as detailed below:

A. Due Process Complaint and Hearing Procedures

1. In its March 11, 2022 response, and submission to OSEP regarding the corrective action(s) under Due Process Complaint and Hearing Procedures, VDOE provided the following documents:
 - a) Tracking Log
 - b) Memorandum to Hearing Officers dated September 30, 2020
 - c) Memorandum to Hearing Officer Francis dated October 8, 2021, and
 - d) Letter to Supreme Court of Virginia dated January 6, 2022.
2. Additionally, during a phone call with OSEP on April 20, 2022, the State noted that it had plans for the development of a real-time tracking system. However, the current tracking log is completed using information obtained from hearing officers upon case completion, rather than in real time.
3. OSEP noted during the April 20, 2022 call, OSEP received complaints alleging that Hearing Officers have not adhered to hearing timelines required in 34 C.F.R. §§ 300.515(a) for a due process hearing, specifically granting extensions for issuing decisions from September 2020 to December 2021.

OSEP also noted discrepancies between case information reported in the tracking log and information contained in Pre-Hearing Reports provided by Virginia parents issued in their respective cases. In the phone call on April 20, 2022, State staff indicated they do not review Pre-Hearing Reports and other documents provided during Due Process Hearings; however, the State does maintain the documents in its files.

Based on the above, OSEP is unable to determine if the State has revised its due process hearing data collection processes to ensure that, consistent with the information set forth above, it is able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA Section 618 dispute resolution data submission for due process hearings conducted pursuant to 34 C.F.R. §§ 300.511–300.515 and for expedited due process hearings conducted pursuant to 34 C.F.R. § 300.532.

B. State Complaint Procedures

1. In its March 11, 2022 response submission to OSEP regarding the corrective actions under State Complaint procedures, the State provided a September 21, 2020, Staff Protocol for Communications with Individuals Subject to a Communication Plan.
 - a) This protocol outlines a process to review incoming communication on a weekly basis to identify complaints and ensure they are handled via the state complaint protocol provided by the state.
 - b) OSEP is copied on several communications identified as complaints by the authors of the emails. It is unclear if the authors are subject to a communication plan with the State, however, it does not appear that all the complaints are handled according to the state complaint protocol.
2. In response to OSEP’s February 8, 2022 follow up letter requiring the State to “provide OSEP with documentation showing, at a minimum, examples of how incoming communications were handled and the results of these actions”, the State provided a log of “incoming communications and how they were handled.”
 - a) That log outlines approximately 1,843 communications with 29 outcomes.

Based on the documentation submitted, OSEP remains concerned that the State is not addressing the complaints it receives in a timely manner. Therefore, it is not clear if the State is implementing procedures and practices to ensure that the State resolves every complaint that meets the requirements in 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, even in circumstances where the State develops a communication plan with an individual complainant.

C. Independent Educational Evaluations

1. OSEP’s February 8, 2022 follow up letter to the required actions under Independent Educational Evaluations, in which OSEP requested the State to require LEAs to conduct a review of their policies, procedures, and practices, to ensure that LEAs do not limit a parent’s right to obtain an IEE at public expense to the areas of assessment or evaluation components that were previously conducted by the public agency.
 - a) OSEP has been copied on correspondence from parents addressed to LEAs or the State regarding concerns with compliance with IEE requirements including the continued use of “denial” letters contrary to IDEA.

OSEP is concerned that the State has not fully disseminated updated guidance on IEEs nor required LEAs to ensure they do not limit a parent’s right to IEEs. OSEP found outdated

guidance listed on the State’s website, including guidance located here: [VDOE: Special Education State Regulations, Laws & Policies \(virginia.gov\)](#).

Summary

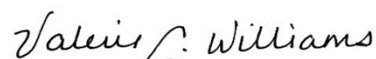
VDOE has not satisfactorily corrected each of the areas of noncompliance identified in OSEP’s May 23, 2020, DMS Report. OSEP has scheduled a meeting for September 8, 2022, with the State Director of Special Education to discuss the status of the outstanding corrective actions and anticipated timeframe for completion. OSEP reminds VDOE that all noncompliance should be corrected as soon as possible and in no case more than one year after identification.

OSEP requests that VDOE submit the information and documentation below, which the State had previously agreed to provide. The documents can be uploaded via the secured SharePoint link provided on July 29, 2022:

1. Case Closure Summaries/Reports requested on February 8, 2022, and May 11, 2022, especially relating to all hearings held between September 1, 2020, and December 31, 2021.
2. Documentation demonstrating that the State has reviewed its due process hearing data collection processes and revised them, as necessary, to ensure that, consistent with the information set forth above, it will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for the IDEA Section 618 dispute resolution data submission for due process hearings conducted pursuant to 34 C.F.R. §§ 300.511–300.515 and for expedited due process hearings conducted pursuant to 34 C.F.R. § 300.532.
3. Documentation demonstrating the State is implementing procedures and practices to ensure that the State resolves every complaint that meets the requirements in 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, even in a circumstance where the State develops a communication plan with an individual complainant
4. Documentation demonstrating State has required LEAs to conduct a review of their policies, procedures, and practices, to ensure that LEAs do not limit a parent’s right to obtain an IEE at public expense to the areas of assessment or evaluation components that were previously conducted by the public agency.

OSEP appreciates the cooperation and assistance provided by your State staff in addressing the above requirements to improve compliance with IDEA Part B requirements and results for children with disabilities. If you have any questions, please do not hesitate to call your OSEP State Lead, Koko Austin, at Ayorkor.Austin@ed.gov or 202-245-6720.

Sincerely,



Valerie Williams
Director
Office of Special Education Program

Page 7 – Honorable Jillian Balow

cc: Samantha Hollins, State Director of Special Education