

**Enclosure**  
**OSEP’s Response to the Virginia Department of Education’s Differentiated Monitoring System Document Submission**  
**February 17, 2023**

**COMPLIANCE**

**GENERAL SUPERVISION**

FINDING: 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 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<sup>1</sup>.

REQUIRED ACTIONS	STATE DOCUMENTS SUBMITTED	OSEP ANALYSIS	REQUIRED ACTIONS/ NEXT STEPS
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Within 90 days of the date of this letter, consistent with the State’s general supervisory and monitoring responsibilities described above, the Virginia Department of Education (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:

<p><b>1.</b> 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</p>		<p>Closed September 2022</p> <p><u>Additional Concern</u></p> <p><i>Provision of FAPE during the COVID-19 Pandemic and Compensatory Services:</i> 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, the LEA 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.<sup>2</sup> Similarly, although OCR cited violations with Section 504, the policies and practices identified in this letter also appear to be inconsistent with IDEA.</p> <p>In addition, OSEP is aware of State complaint decisions that were consistent with the policy and practices cited by OCR. Since the VDOE guidance was Statewide and</p>	<p>Original finding is closed based on the submission documentation consistent with required actions. However, the consistent implementation of these procedures remains an area of concern. Further, we noted in our September 1, 2022, letter, that 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 that OSEP may receive. OSEP intends to further investigate the effectiveness of implementation of VDOE’s general supervision system. OSEP</p>
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<sup>1</sup> This citation was modified to reflect changes in the Uniform Guidance ([2 C.F.R. § 200](#)) dated November 12, 2020.

<sup>2</sup> See, “Considerations for COVID Recovery Services for Students with Disabilities.”

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<p>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</p>		<p>because OSEP has received complaints from across the State about practices similar to those cited by OCR in Fairfax, OSEP will examine this matter.</p>	<p>will further investigate this area in upcoming monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p> <p><b><u>Additional Concern</u></b>  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 actions based on new analyses and findings, if any.</p>
<p><b>2.</b> 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 LEA noncompliance in a timely manner.</p>		<p>Closed September 2022</p>	<p>Closed. No further action is required for this item but see above as to further review of implementation.</p>
<p><b>3.</b> The State must provide a copy of the notification to be issued to all LEAs, parent advocacy groups and other interested parties advising</p>		<p>Closed September 2022</p>	<p>Closed. No further action is required for this item.</p>

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<p>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.</p>			
<b>DISPUTE RESOLUTION</b>			
<b>STATE COMPLAINT PROCEDURES</b>			
<p><b>FINDING:</b> 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:  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>			
<b>REQUIRED ACTIONS</b>	<b>STATE SUBMITTED DOCUMENTS</b>	<b>OSEP ANALYSIS</b>	<b>REQUIRED ACTIONS</b>
<p>Within 90 days of the date of this letter,</p>			
<p><b>1.</b> The State must submit to OSEP documentation demonstrating that 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.</p>	<p><u>March 2022</u>  Document submission - “Virginia’s System of General Supervision under IDEA” (pages 25-26) (links contained in document are broken/incorrect)</p> <p><u>November 3, 2022</u>  Undated “Internal Office Procedures for Complaint Process Documentation” – 3</p>	<p>VDOE provided its internal complaint procedures in November 2022. VDOE previously provided its external Complaint Resolution Procedures (hardcopy) via email in May 2022 which is also a public document. OSEP located an updated version of the Complaint Resolution procedures (updated January 2022) hosted on the State’s website: <a href="http://www.virginia.gov">Complaint Resolution Procedures (virginia.gov)</a></p> <p>OSEP was also provided with a copy of VDOE’s complaint tracking log for the period 2014 – 2022 (PII omitted) from a parent. Parent obtained the logs via a FOIA request, covering 2014 through January 2023, fulfilled by the State.</p> <p>The State potentially not addressing credible allegations of noncompliance and resolving complaints that meet IDEA requirements, could result in children with disabilities in the State not receiving FAPE, including the supports, services and protections afforded them by IDEA.</p> <p>OSEP continues to receive information from parents, many of them meet the criteria for a communication plan as outlined by the State during the onsite visit, for whom VDOE does not address the allegations submitted as a State complaint within required</p>	<p>The original finding remains open. OSEP will further investigate this area and the additional concerns in upcoming monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>

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	<p>pages numbered 22, 23, and 24 (page 22 is a cover page).</p> <p>Link to current State Complaint Procedures included in the Internal Procedures document submission. (Links are not valid as of January 11, 2023)</p> <p>Here is a valid link search and located 1/11/23):  <a href="#">Complaint Resolution Procedures (virginia.gov)</a></p>	<p>timelines (in accordance with IDEA minimum state complaint procedures and Virginia’s Complaint Resolution Procedures).</p> <p>Example 1: According to emails OSEP has been copied on, a parent<sup>3</sup> submitted a complaint on two occasions in September and October 2022. In response to both submissions, VDOE provided letters of inquiry (LOI). The parent spoke with the Office of Dispute Resolution and Administrative Services (ODRAS) director on November 9, 2022 due to an issue that arose unrelated to the issues complained. During that call, the parent outlined what she felt were incorrect decisions on sufficiency resulting in the LOIs and the ODRAS director agreed the complaint submitted (in September and October) was valid and was informed a Notice of Complaint was forthcoming. VDOE issued a Notice of Complaint on November 21, 2022 and recorded the “submission date” as November 10, 2022 (seven (7) business days prior to the Notice of Complaint date consistent with VA regulations). It is unclear how VDOE determined November 10, 2022, as the “submission date”.</p> <p>Example 2: A parent (unidentified) submitted a complaint on December 29, 2020. The State issued its findings on March 15, 2021. In its letter of findings, VDOE cited a complaint date as January 4, 2021. The findings were issued outside of the required 60 days based on both the submission date and the complaint date cited by the State. This record is not contained in the State’s tracking log by any of the dates listed in the Letter of Findings or records shared with OSEP.</p> <p>Example 3: A parent<sup>4</sup> submitted what she presented as a complaint on May 9, 2022. VDOE provided a LOI via email on May 18, 2022, outside of the State’s timeline regulation.</p> <p>Example 4: A parent<sup>5</sup> submitted what she presented as a complaint on June 2, 2022. VDOE provided a LOI via regular mail dated June 3, 2022 that was not received until June 16, 2022. In the June 3, 2022, the State offered a conclusion on the issue submitted in Parent’s complaint, stating the complaint was premature (based on its purported date of June 3, 2022) and offered opinions with references regarding the issue raised in parent’s complaint. The parent resubmitted the complaint on June 17,</p>	
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<sup>3</sup> The specific information can be provided to the State upon request.

<sup>4</sup> The specific information can be provided to the State upon request.

<sup>5</sup> The specific information can be provided to the State upon request.

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		<p>2022 providing objection to VDOE’s conclusion and additional information. To date, VDOE has not resolved the resubmitted complaint.</p> <p>Example 5: A parent<sup>6</sup> submitted what she presented as a complaint on July 12, 2022. VDOE provided a LOI via email on August 9, 2022.</p> <p>The State tracking logs provided by the parent (received via FOIA request) have missing information. It is not clear if the State is accurately tracking complaints received to ensure it resolves every complaint.</p> <p>Based upon information presented above, OSEP is unable to determine that VDOE 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.</p> <p><b><u>Additional Concerns</u></b></p> <p>OSEP notes the State’s external complaint resolution procedures documents submitted (and published online) appear inconsistent with the State’s complaint resolution procedures regulations; 8VAC20-81-200(C) and (D).</p> <ol style="list-style-type: none"> <li>1. <u>Timelines for determining sufficiency</u> <ol style="list-style-type: none"> <li>a. The State regulations afford <b>SEVEN DAYS</b><sup>7</sup> for the State to determine sufficiency and notify the writer.</li> <li>b. The State regulations afford <b>SEVEN BUSINESS DAYS</b> to acknowledge and provide a copy of the valid complaint to all parties.</li> <li>c. The State’s internal complaint resolution procedures require that “Within seven (7) business days of the receipt of the complaint, Office of Dispute Resolution and Administrative Services (ODRAS) reviews the complaint and supporting documentation and proceeds as follows:” It further provides: “If ODRAS determines that the complaint is insufficient for any reason, the complainant and LEA are notified in writing ...”<sup>8</sup> OSEP notes the inconsistency between in the use of business days and calendar days.</li> </ol> </li> </ol>	
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<sup>6</sup> The specific information can be provided to the State upon request.

<sup>7</sup> 8VAC20-81-10. “Definitions: ‘Day’ means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)”

<sup>8</sup> The procedures outlined by VDOE appear inconsistent with the Virginia Complaint Resolution procedures requiring VDOE to determine sufficiency and notify the writer within seven (calendar) days.

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		<p>d. The excerpt of the “internal procedures” (Appendix C) provided by the State on November 3, 2022, indicates the same timeline: “[R]esponses to inquiries and formal complaints must be sent out of the office within seven (7) business days from the initial date of receipt to document receipt and provide information about next steps”.<sup>9</sup></p> <p>2. <u>Relevant Issues</u>: Neither IDEA nor the State regulations contain a specific requirement that the State (VDOE) <i>identify relevant issues in reference to applicable laws and regulations</i>.<sup>10</sup> OSEP is concerned that implementation of this additional step could result in VDOE not investigating all issues complained of as required by 34 C.F.R. § 300.152.</p> <p>a. In the Complaint Resolution procedures submitted, VDOE has outlined a process that is not specifically required by state regulations or IDEA. The process of identifying “relevant issues in reference to applicable laws and regulations” appears to be used as the basis for its investigation. Within VDOE’s internal procedures, the identification of relevant issues in reference to applicable laws is accomplished by selecting from a “bank” of issues to choose from.</p> <p>OSEP is concerned VDOE’s Letter of Inquiry template and sufficiency determination practices appear to be inconsistent with Virginia’s Complaint Resolution procedures regulations and these practices may result in VDOE not investigating all issues as required in 34 C.F.R. § 300.152. OSEP is also concerned that, in practice, and although not specifically required by the State’s regulations, VDOE decides, <i>prior to its investigation</i>, whether or not the facts stated are "sufficient to support the allegation."</p> <p><u>Copy of Complaint</u>: Consistent with IDEA’s implementing regulations, (34 C.F.R. § 300.152), Virginia’s Regulations require VDOE to send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint.</p>	
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<sup>9</sup> The internal procedures outlined by VDOE are inconsistent with the Virginia Complaint Resolution procedures requiring VDOE to determine sufficiency and notify the writer within seven (calendar) days

<sup>10</sup> Virginia’s State complaint resolution procedures (8VAC20-81-200(D)(1)(a)) require within seven business days of the receipt of a valid complaint, the Virginia Department of Education shall send written notification to each complainant and the local educational agency against which the violation has been alleged, acknowledging receipt of a complaint and include **a copy of the complaint** in addition to other requirements. VDOE’s notification procedures does not include providing a copy of the complaint as required by the State’s Complaint Resolution Procedures.

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		<p>The notification must include a copy of the complaint, an offer of technical assistance in resolving the complaint, a statement the local educational agency has the opportunity to propose, at the local education agency’s discretion, a resolution of the complaint, notification of the opportunity for the parties to engage voluntarily in mediation ...</p> <p>OSEP notes that in its review of nine emails from VDOE containing Notices of Complaint and related attachments, none of the emails included a copy of the complaint as required by the procedures. The emails contain the Notice of Complaint prepared by VDOE, a copy of VDOE’s Mediation Overview brochure, and a copy of VDOE’s Complaint Resolution Procedures. This appears to be a practice that is not consistent with IDEA requirements.</p> <p>3. <u>Investigation of all allegations</u>: Parents have also alleged that VDOE does not address all allegations of noncompliance.</p> <p>Example: In 2022, a parent (unidentified) submitted a Complaint containing specific allegations of noncompliance. VDOE provided the parent with a Notice of Complaint outlining what VDOE deemed to be the “relevant issues” for investigation. The parent provided written objection to VDOE’s determination on the issues for investigation and cited specific allegations of noncompliance not included. The parent requested an amended Notice of Complaint ensuring all allegations of noncompliance were included in the investigation. VDOE acknowledged the request but did not amend its Notice of Complaint and proceeded with its investigation based on the original notice provided.</p> <p>4. <u>Sufficiency</u>: OSEP also is concerned that VDOE issues LOIs even in cases where the parent asserts to having met all the State’s published sufficiency requirements.</p> <p>The State’s regulations require a State Complaint to contain, among other things, a description of the nature of the problem of the child, including <i>facts relating to the problem</i> in order to be considered valid.</p> <p>In the State’s LOI template, there are generic reasons for identified insufficiency (with lines to be checked off as applicable). The reasons include</p>	
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		<p>among others: “The complaint includes insufficient facts to support the alleged violations” and “other”<sup>11</sup>.</p> <p>Example: A parent<sup>12</sup> submitted a complaint on May 25, 2022. On May 31, 2022, the State issued a Letter of Inquiry document, checking the 1<sup>st</sup> box on its template; “The complaint does not allege that the local educational agency or VDOE has violated a requirement of federal and/or state special education laws and/or regulations.” The State typed in additional commentary under number 1, offering its opinion and conclusion of the facts and evidence outlined in and submitted with the parent’s complaint.</p> <p>On July 18, 2022, a parent resubmitted her corrected Complaint addressing the deficiencies providing relevant Federal and/or State special education laws and/or regulations as cited in the May 31, 2022 LOI, as well as, raising a new issue. On July 21, 2022, the State issued a second LOI checking the “other” box as the reason for insufficiency<sup>13</sup>. The State then offered a conclusion on the new issue submitted in Parent’s complaint, stating the Complaint was premature and offered opinions with legal references regarding the issue raised in parent’s complaint<sup>14</sup>. The State also upheld its May 31, 2022 decision with respect to the issue identified in the original complaint (May 25, 2022) citing the issue as “duplicative”<sup>15</sup>.</p> <p>Example: A parent<sup>16</sup> submitted what she presented as a State Complaint on October 21, 2022. On November 1, 2022 (11 calendar days after submission), the State issued a Letter of Inquiry stating the complaint did not meet the State’s sufficiency requirements. In the State’s Letter of Inquiry template, there are generic reasons for insufficiency (with lines to be checked off as</p>	
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<sup>11</sup> It is not clear which state regulation on sufficiency the “other” box would apply.

<sup>12</sup> The specific information can be provided to the State upon request.

<sup>13</sup> It is not clear which state regulation on sufficiency the “other” box would apply.

<sup>14</sup> 34 C.F.R. § 300.152 requires the State to review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act and issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the SEA's final decision.

<sup>15</sup> Ibid.

<sup>16</sup> The specific information can be provided to the State upon request.



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		applicable). The reasons include: <i>The complaint includes insufficient facts to support the alleged violations</i> <sup>17</sup> .	
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**DUE PROCESS COMPLAINT AND HEARING PROCEDURES**

FINDING: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that:

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:
  - 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
  - b. VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(c)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(c)(2) in order to properly track due process hearing decision timelines.
2. 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.
3. 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.
4. 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.

REQUIRED ACTIONS	STATE SUBMITTED DOCUMENTS		
<b>1.a.</b> The State has a mechanism for tracking the timelines for the resolution process required under 34 C.F.R. § 300.510 to determine	<u>November 3, 2022</u>  a. Case Closure Summaries	The documentation provided by the State, which includes both Pre-Hearing Orders and Case Closure summaries, demonstrate the State has met the required action.	No further action is required for this item.

<sup>17</sup> OSEP is concerned VDOE’s Letter of Inquiry template and sufficiency determination practices are inconsistent with Virginia’s Complaint Resolution procedures regulations and these practices may result in VDOE not investigating all issues as required in 34 C.F.R. § 300.152. The State’s regulations do not require VDOE to decide on whether the facts are "sufficient to support the allegation"; that determination should be made in the investigation.

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<p>when: resolution meetings occur; the 30-day resolution period or the adjusted resolution period has concluded; and the 45-day hearing timeline commences.</p>	<ul style="list-style-type: none"> <li>b. Summary of Due Process</li> <li>c. Hearing Officer Reminders (5/26/22) includes:</li> <li>d. Link Managing Due Process Timeline for Hearing Officers (not a valid link as of Jan 13, 2023)</li> <li>e. Link to Navigating the Maze of Due Process (link not valid as of January 13, 2023)</li> <li>f. Superintendent's Memo dated March 11, 2022 with proof of distribution</li> </ul>		
<p><b>1.b.</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</p>	<p>The documents submitted for the required actions are the same as above in 1. a.</p>	<p>The documentation provided by the State, which includes both Pre-Hearing Orders and Case Closure summaries, demonstrate the State has met the required action.</p>	<p>No further action is required for this item.</p>

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<p>due process hearings and determinations in those hearings occur within the timelines required in 34 C.F.R. § 300.532(c)(2).</p>			
<p><b>1.c.</b> Hearing officers are receiving appropriate training allowing them to apply and track the resolution period timelines for all due process hearings.</p>	<p>The documents submitted for the required actions are the same as above in 1. a.</p>	<p>The documentation provided by the State, which includes both Pre-Hearing Orders and Case Closure summaries, demonstrate the State has met the required action.</p>	<p>No further action is required for this item.</p>
<p><b>2.</b> 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</p>	<p>The documents submitted for the required actions are the same as above in 1.a.</p>	<p>IDEA’s Due Process regulations require a fair and impartial means for parties to resolve disputes. The State is required to report accurate dispute resolution data as part of the data reported to the Department annually. Section 618 of the IDEA requires that each State submit data about children ages 3-21, who receive special education and related services under Part B of IDEA. OSEP reviews and evaluates the timeliness, completeness, and accuracy of the data submitted by States to meet the reporting requirements under Section 618 of IDEA. OSEP also conducts year to year change analysis on data submitted by the States.</p> <p>Under 34 C.F.R. §300.515(c), a hearing or reviewing officer may grant specific extensions of time beyond the periods set out in §§300.515(a) and (b) at the request of either party. OSEP notes that IDEA does not prescribe any additional conditions or requirements for extension requests.</p> <p>Documents provided by VDOE on January 11, 2023, indicate that Hearing Officers extended hearing timelines without documenting that it was based on a request by either party in six out of seven (85%) of 2021 hearings resulting in a decision. In those matters, Hearing Officers often included statements such as “the parties agree” or simply “[the extension] is in the best interest of the student.”</p> <p>On January 23, 2023, VDOE provided an email response to OSEP’s January 19, 2023 email, alleging with respect to the continuances:</p> <ol style="list-style-type: none"> <li>1. "[M]any of these cases were rendered within the relevant timeline, regardless of whether a continuance was granted”;</li> </ol>	<p>The original finding remains open. OSEP will further investigate this area and the additional concerns in upcoming monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>

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<p>1, 2020, through June 30, 2021.</p>		<ol style="list-style-type: none"> <li>2. “For those that did involve a continuance - most of the relevant continuances occurred either on Pre-Hearing Conference calls or at the end of a Due Process Hearing”; and,</li> <li>3. "Our Hearing Officer Evaluators, who routinely sit in on the first two Pre-Hearing Calls and the first two days of hearing (sometimes more), were present for some of the relevant continuance discussions and reported that the continuance was requested by a party or parties.”</li> </ol> <p>OSEP notes that there is an apparent discrepancy between the information contained in the Case Closure reports, which VDOE has explained they use to track timelines, and the alleged reports from the Hearing Officer Evaluators. This further calls into question the State’s due process hearing data collection processes and whether it provides 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.</p> <p><b>Additional Concerns:</b></p> <p>As noted in our letter to the State, dated January 17, 2023, a provision in Virginia law appears inconsistent with IDEA requirements. Specifically, the provision in Virginia Administrative Code 8VAC20-81-210(P)(9)(b) which states: “[I]nstances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension” is inconsistent with the language in 34 C.F.R. § 300.515(c), which addresses the authority to grant extensions of the hearing timeline. In a telephone conference held on January 13, 2023, State representatives indicated that this provision was passed to address a situation where a hearing officer died in the middle of a hearing. As discussed, it is hard to imagine that in such circumstances, either the parent or school district would not request a timeline extension for the appointment of a new hearing officer. Moreover, the provision at issue is not limited to such situations.</p>	
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		<p>Under 8VAC20-81-210, it appears that a request of either party to a non-expedited hearing for specific extensions of time beyond the periods set out in that chapter, may only be granted based on a determination that the extension is in the best interest of the child.</p> <p>In its May 4, 2022, and November 3, 2022, submissions, VDOE provided its Due Process and Hearing procedures documents for Hearing Officers (and ODRAS staff); the documents are titled “Navigating the Maze of Due Process” and “Managing Due Process Timeline for Hearing Officers”. OSEP noted the following statements:</p> <ul style="list-style-type: none"><li>• On page eight of the Navigating the Maze document, “A hearing officer may grant specific extensions of the timeline beyond the 45-calendar day period at the request of either party only when it serves the best interest of the child. The hearing officer must document extensions in writing to the parties and VDOE, including establishing a new date for issuing the decision.</li><li>• On pages six and seven of the <i>Managing Due Process Timeline</i> document, VDOE provides information regarding allowable extensions to the 45-day time-period. However, the citations relied upon in the procedures are incorrect. The citations provided in the document are: 8 VAC § 20-81-210. G., which governs the amendment of the due process notices; and 34 C.F.R. § 300.515(d), which governs time and place of the hearing. Additionally on page 7, VDOE’s document emphasizes Virginia Regulations require continuances granted must be in the “best interest of the child” and refers to the applicable regulation (8 VAC § 20-81-210(P)(9)).</li><li>• On page 24 of the Managing the Due Process Timeline, the State’s guidance provides that reports must document the facts justifying the extension and outline the specific facts that indicated the extension was in the best interest of the child. The State’s procedures emphasize “It is absolutely essential that there be a finding that the extension is in the best interest WITH SUPPORTING REASONING.”</li></ul> <p>As previously noted, under 34 C.F.R. §300.515(c), a hearing or reviewing officer may grant specific extensions of time beyond the periods set out in §§300.515(a) and (b) at the request of either party. Generally, there will be many reasons for requesting a specific extension of the timelines, including, as noted above, the unexpected illness</p>	
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		<p>or death of one or more hearing participants or the officiant. Appropriate legal standards would generally allow broad discretion to a presiding hearing officer in considering the equities of any parental request for an extension, whether or not the parent has proven that the extension is in the child's best interest. See 34 C.F.R. §300.511(c)(iv). The IDEA does not contain this additional burden on parents, or limitations on the hearing officer's authority to consider a parent's request consistent with appropriate legal standards. However, the above-noted provision appears to impose a limitation for granting parental requests for extensions and an additional burden on parents that must always be met. That is, because the best interest of the child requirement appears to be a significant and substantive standard that may be applied to impose an additional burden and limit a parent's procedural protections, OSEP intends to review this matter further with the State.</p>	
<p><b>3.</b> 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.</p>	<p>The documents submitted for the required actions are the same as above in 1. a.</p>	<p>VDOE has provided a notification as required with respect to the changes in tracking and monitoring resolution sessions.</p>	<p>No further action is required for this item.</p>
<b>MEDIATION</b>			
<p>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(c)(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>			
<b>REQUIRED ACTIONS</b>	<b>STATE</b>	<b>OSEP ANALYSIS</b>	<b>REQUIRED ACTIONS/ NEXT</b>

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	SUBMITTED DOCUMENTS		STEPS
Within 90 days of the date of this letter, the State must provide:			
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.		Closed September 2022	No further action is required for this item.
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 session.		Closed September 2022	No further action is required for this item.
<b>INDIVIDUAL EDUCATIONAL EVALUATIONS</b>			
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 Individual Independent Evaluation (IEE) at public expense to only those areas in which the public agency had previously evaluated the child.			
REQUIRED ACTIONS	STATE SUBMITTED DOCUMENTS	OSEP ANALYSIS	REQUIRED ACTIONS/ NEXT STEPS
Within 90 days of the date of this letter, the State must:			

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<p><b>1.</b> Submit a written assurance to OSEP specifying that as soon as possible but in no case later than one year from the date of this 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.”</p>		<p>Based on the documentation and information provided, OSEP has determined the State has complied with required action 1 for this section.</p>	<p>No further action is required for this item.</p>
<p><b>2.</b> 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;</p>		<p>Based on the documentation and information provided, OSEP has determined the State has complied with required action 1 for this section.</p>	<p>No further action is required for this item.</p>



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<p>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).</p>			
<p><b>3.</b> Upon completion of the changes to the Administrative Code, submit to OSEP documentation of the revisions.</p>		<p>Based on the documentation and information provided, OSEP has determined the State has complied with required action 3 for this section.</p> <p>The State has finalized changes to its regulations found at Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e).  <a href="https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section170/">https://law.lis.virginia.gov/admincode/title8/agency20/chapter81/section170/</a></p>	<p>No further action is required for this item.</p>
<p><b>4.</b> 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):</p> <p>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</p>	<p>State response Memo 11/3/2022:  Reminder of the Superintendent’s Memo 059-22 directing LEAs to conduct a review of their policies, procedures, and practices relating to IEEs.</p> <p>January 23, 2023 (phone call): State intends on updating</p>	<p>Parents of a child with a disability have a right to obtain an IEE, broadly defined as “an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.” When the student’s parents disagree with the school district’s evaluation and request an IEE at the public expense, the school district must pay for the IEE or request a due process hearing to defend its evaluation. This includes providing an IEE for assessments the public agency did not perform or defending its evaluation at a due process hearing.</p> <p>OSEP is concerned that it appears that VDOE has not required LEAs to revise their policies, procedures, practices in a manner consistent with 34 C.F.R. § 300.502.</p> <p>Specifically, OSEP has identified at least five LEAs<sup>18</sup> that continue to have “approval” procedures for IEEs. Our review of examples of procedures that were provided to OSEP, indicate that these LEAs continue to engage in “approval” or “denial” of IEEs in a manner that is inconsistent with IDEA requirements. For example, it appears that LEAs have issued denial letters for various reasons without</p>	<p>The original finding remains open. OSEP will further investigate this area and the additional concerns in upcoming monitoring activities and may require additional corrective actions based on new analyses and findings, if any.</p>

<sup>18</sup> OSEP has not conducted a comprehensive review of LEA policies, procedures, and practices but has been made aware of examples in Chesapeake, Fairfax, Hanover, Henrico, and Powhatan Public Schools

