

DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT OFFICE OF SPECIAL EDUCATION PROGRAMS U.S. Department of Education

STATE **FLORIDA**

DATE DECEMBER 18, 2020

IDEA PART B

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

December 18, 2020

Honorable Richard Corcoran
Commissioner
Florida Department of Education
Turlington Building, Suite #1514
Tallahassee, Florida 32399
Commissioner@fldoe.org

Dear Commissioner Corcoran:

This letter provides a summary of the results of the on-site monitoring visit conducted by the U.S. Department of Education's Office of Special Education Programs (OSEP) on December 9–11, 2019. The purpose of this monitoring visit was to examine the State's compliance under Part B of the Individuals with Disabilities Education Act (IDEA or IDEA Part B), with the dispute resolution procedures and certain procedural safeguard requirements. Participants during the visit included staff from the Florida Department of Education's (FLDOE or State) Bureau of Exceptional Education and Student Services (Bureau), State administrative law judges who serve as hearing officers, and some local educational agency (LEA) officials.

OSEP selects States for on-site monitoring in two ways: 1) a risk assessment conducted of all States; and 2) emerging issues that come to our attention. As explained in OSEP's Differentiated Monitoring and Support notice sent to FLDOE on August 26, 2019, OSEP selected FLDOE's IDEA Part B program for an on-site visit due to emerging issues regarding: 1) the State's dispute resolution system; and 2) procedural safeguards. Specifically, OSEP focused on the State's implementation of the IDEA regulatory requirements related to State complaint procedures, independent educational evaluations, and prior written notice. In the course of its review, OSEP has also identified two provisions governing mediation and State complaint procedures in Florida's Administrative Code, Rule 6A-6.03311—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities that must be amended to comply with IDEA. In addition, OSEP has attached its analysis of Florida's Part B Notice of Procedural Safeguards for Parents of Students with Disabilities and has identified the areas that must be revised to comply with IDEA.

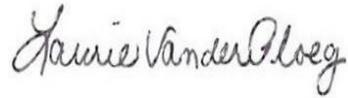
The enclosed monitoring report describes the following: 1) Background; 2) Overview; 3) OSEP's Analysis of each issue; 4) OSEP's Conclusions; and 5) Required Actions/Next Steps. The details regarding any findings of noncompliance, along with the respective citation(s), and the corrective action(s) required to address each finding of noncompliance are included in the enclosed monitoring report.

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The Department of Education's mission is to promote student achievement and preparedness for global competitiveness by fostering educational excellence and ensuring equal access.

OSEP appreciates your efforts to improve results for children with disabilities. If you have any questions, please contact Dwight Thomas, your OSEP State Lead, via email at Dwight.Thomas@ed.gov.

Sincerely,

A handwritten signature in cursive script that reads "Laurie VanderPloeg".

Laurie VanderPloeg
Director
Office of Special Education Programs

cc: Victoria Gaitanis, State Director

Enclosure

ENCLOSURE

Overview

During the on-site visit, the Florida Department of Education's (FLDOE) presented an overview of the State's organizational structure and introduced members of the State's Leadership Team responsible for implementing the State's general supervision system in connection with its dispute resolution procedures. The State described the components of its general supervision system, including how it uses information from its dispute resolution activities to ensure that its local educational agencies (LEAs) properly implement Individuals with Disabilities Education Act (IDEA) requirements related to State complaints and due process complaints, including State complaints that are also the subject of a due process hearing. Specifically, during this time, the State:

1. Provided its model forms, developed in accordance with 34 C.F.R. § 300.509, that it makes available to assist parents and other parties in filing State complaints, and parents and school districts in filing due process complaints;
2. Described its internal guidelines and procedures for addressing alleged violations of IDEA Part B, as well as the procedures it has for disseminating its procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities;
3. Reviewed how the State determines the corrective actions needed to address the denial of appropriate services (such as compensatory services or monetary reimbursement) and to ensure the appropriate future provision of services for all children with disabilities as required by 34 C.F.R. § 300.151(b)(1) and (2); and
4. Described how the State enforces IDEA State complaint decisions.

The State provided a detailed description of its practice that was in effect at the time of the on-site visit of accepting a complainant's or district's proposal to resolve a complaint when an organization or individual files a State complaint.

The State described its policies, procedures, and guidelines for reporting timely and accurate dispute resolution data under Section 618 of IDEA, including data on State complaints filed under 34 C.F.R. §§ 300.151–300.153, mediations requested under 34 C.F.R. § 300.506, resolution meetings convened under 34 C.F.R. § 300.510, and due process complaints filed under 34 C.F.R. § 300.507, including those that result in due process hearings, and expedited due process complaints filed under 34 C.F.R. § 300.532(a).

While on-site, OSEP had the opportunity to meet with the State's team of Administrative Law Judges (ALJs) who are responsible for handling IDEA due process complaints and conducting due process hearings. The ALJs provided an overview and discussed their roles in the State's due process complaint and hearing system.¹

¹ OSEP did not examine Florida's due process complaint and hearing system during this on-site monitoring visit. Therefore, OSEP did not make any conclusions as to whether that system is in compliance with IDEA requirements.

Additionally, OSEP met with six of the State's LEA Directors of Special Education who described their understanding of: (1) the State's policies and procedures for resolving State complaints under the IDEA; (2) an LEA's responsibility for responding to parent request for an independent educational evaluation (IEE) at public expense; and (3) IDEA requirements for providing prior written notice to parents. Specifically, the State's LEA Directors discussed with OSEP the guidance and technical assistance the State has provided them as well as the monitoring and oversight activities the State conducts to ensure that LEAs are meeting the requirements in 34 C.F.R. §§ 300.502–300.503. These matters are discussed in further detail below.

General Legal Requirements for Dispute Resolution Under IDEA

Pursuant to 20 U.S.C. §§ 1412(a)(11) and 1416(a), and 34 C.F.R. §§ 300.149 and 300.600(a), each State must exercise general supervision over all educational programs administered in the State for children with disabilities to ensure that all such programs meet the educational standards of the State educational agency (SEA) and the requirements of Part B of the Individuals with Disabilities Education Act (IDEA). Consistent with this responsibility, the State must have dispute resolution procedures and practices that are reasonably designed to implement:

1. The State complaint procedures requirements in 34 C.F.R. §§ 300.151 through 300.153, and 20 U.S.C. § 1221(e–3);
2. The mediation requirements in 20 U.S.C. § 1415(e) and 34 C.F.R. § 300.506; and
3. The due process complaint and impartial due process hearing and expedited due process hearing requirements in 20 U.S.C. §§ 1415(b)(6)–(8), (c)(2), (f)–(i), (k)(3) and (4), and (o), and 34 C.F.R. §§ 300.507–300.518 and 300.532.

FLDOE's Implementation of State Complaint Procedures under 34 C.F.R. §§ 300.151–300.153

Acceptance of a Complainant's or District's Proposal to Resolve a Complaint

Specific Requirements

Under 34 C.F.R. § 300.151(a), each SEA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 300.153. 34 C.F.R. § 300.152 sets out the minimum complaint procedures, and provides, among other requirements, a time limit of 60 days after the complaint is filed to:

1. Carry out an on-site investigation, if the SEA determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
 - a. At the discretion of the public agency, a proposal to resolve the complaint; and

- b. An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506;
4. 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 or of this part; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
 - a. Findings of fact and conclusions; and
 - b. The reasons for the SEA’s final decision.

Factual Background

In 2017, OSEP received inquiries from two constituents concerning a practice that FLDOE was using to resolve State complaints.² It appeared to OSEP from these inquiries that FLDOE was resolving a State complaint by accepting a district’s proposed resolution of the issues in the complaint and notifying investigators to discontinue further investigation of the allegations once the proposal was accepted. It also appeared to OSEP that this was occurring without consultation with or agreement of the complainant and that FLDOE was not making an independent determination as to whether the public agency was violating a requirement of Part B of IDEA or its implementing regulations as required by 34 C.F.R. § 300.152(a)(4). FLDOE’s cover letters accompanying the decisions received from the constituents read:

“Section 300.152, Title 34 C.F.R., allows the Bureau (State) to accept a proposal or action as a resolution that will correct the issue and consists of actions the State would require as corrective action if a district were found in violation of a state or federal statute, rule or regulation. The Bureau has determined that the district’s proposal constitutes appropriate and effective actions to be completed to address the complaint allegations.”

The State’s complaint resolution enclosures also read: “A proposal to resolve a complaint does not include either admission or denial of the complaint allegations.”

After several discussions with FLDOE officials about this practice, OSEP provided notice to FLDOE, by letter dated October 1, 2019 to Monica Verra-Tirado, FLDOE’s former Bureau Chief, that the State may not be fully complying with the requirements in 34 C.F.R. §§ 300.151–300.153 based on its apparent practice of accepting a complainant’s or district’s proposal to resolve a complaint and concluding its complaint resolution without making an independent determination of whether the public agency was violating one or more requirements of IDEA. OSEP indicated that the matter would be further reviewed through the upcoming monitoring visit.

Prior to the visit, OSEP reviewed the SEA’s log of State complaints filed during Federal fiscal years (FFYs) 2017 and 2018 and selected 12 files (six from FFY 2017 and six from FFY 2018) for review during OSEP’s on-site visit. Seven files contained State complaint decisions where the State had not accepted a proposal to resolve the complaint, and five files included decisions where FLDOE had accepted a district’s proposal to resolve the complaint. In the seven files

²These inquiries transmitted the Bureau’s complaint resolution determinations dated June 12, 2017 (2017-051), June 28, 2017 (2017-059-BRD), and July 25, 2016 (2016-074-ER).

where a district or complainant had not made a proposal to resolve the complaint, OSEP confirmed that FLDOE had reviewed all relevant information and made an independent determination as to whether the LEA was violating a requirement of Part B of IDEA or the IDEA Part B regulations as required by 34 C.F.R. § 300.152(a)(4). By contrast, OSEP determined that in the remaining five files, FLDOE resolved the complaint by accepting a district's proposal to resolve the complaint without making an independent determination as to whether the LEA had violated a requirement of Part B of IDEA or the IDEA Part B regulations. There was no indication from these files that the complainant was consulted about, or agreed with, the district's proposed resolution of their complaint allegations. Further, OSEP's review of these files revealed that after accepting a district's proposed resolution of a complaint, the State resolved its complaint resolution and did not issue a written decision that addressed each allegation in the complaint and contained findings of fact and conclusions and the reasons for its decision, as required by 34 C.F.R. § 300.152(a)(5). The additional files that OSEP reviewed during the on-site visit demonstrated that the State was implementing this practice in January 2019.

Under 34 C.F.R. § 300.152(a)(3)(i) an SEA's minimum State complaint procedures must provide the public agency with the opportunity to respond to the complaint, including, at the discretion of the public agency, a proposal to resolve the complaint. However, absent specific agreement from the complainant to withdraw the complaint, the State's acceptance of a public agency's proposal to resolve a complaint, is independent of, and does not relieve the State of its responsibility to:

- (i) review all relevant information and make an independent determination as to whether a public agency was violating a requirement of Part B of the IDEA or the IDEA Part B regulations, and
- (ii) issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the State's final decision, as required by 34 C.F.R. § 300.152(a)(4) and (a)(5).³

Subsequent to the on-site visit, the State's Administrator for Dispute Resolution notified OSEP orally on August 19, 2020 that, as of July 1, 2020, the SEA had discontinued its practice of accepting a district's or complainant's proposal to resolve a complaint and concluding its complaint resolution without the agreement of the complainant. The State's Administrator for Dispute Resolution also confirmed via an electronic message sent to OSEP on October 1, 2020 that the State had discontinued this practice.

Under the IDEA Part B State complaint procedures, both a complainant and a district are given the opportunity to submit a proposal to resolve the problem, in the case of the complainant, or to resolve the complaint, in the case of the public agency. 34 C.F.R. § 300.153(b)(4)(v) (complainant) and 300.152(a)(3)(i) (public agency). Therefore, OSEP wishes to clarify that it is not inconsistent with IDEA's State complaint procedures for a State to accept the district's or complainant's proposed resolution, provided the State resolves the complaint in accordance with

³ We also note that, under 34 C.F.R. § 300.153(b)(4)(v), if the complaint involves a specific child, the complaint must include a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. OSEP did not review files where FLDOE accepted a complainant's proposed resolution of the problem. Nevertheless, unless the complainant agrees in writing to withdraw the complaint, the State's acceptance of a complainant's proposal to resolve the problem in a complaint involving a particular child does not relieve the State of its responsibility to issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the State's final decision in accordance with the requirements in 34 C.F.R. § 300.152.

the requirements in 34 C.F.R. § 300.152, unless the complainant agrees in writing to withdraw the complaint in light of the State's written acceptance of the district's or complainant's proposal.

The IDEA Part B complaint procedures are a significant component of a State's general supervision system that must include components that are reasonably designed to ensure that all educational programs for children with disabilities administered in the State meet the requirements of IDEA Part B and its implementing regulations. 34 C.F.R. § 300.149(a). The complaint procedures in 34 C.F.R. §§ 300.151–300.153 provide parents with an alternative way of resolving their disagreements with the school district early without having to file a due process complaint, which can become more costly and time-consuming for the parent if the matter cannot be resolved prior to a formal hearing. The State complaint procedures also provide a vehicle for organizations and individuals to seek to resolve systemic concerns that involve a public agency's compliance with IDEA Part B and its implementing regulations affecting a group of children. Accordingly, through its Part B State complaint procedures, each State has a powerful tool to address noncompliance with IDEA Part B and its implementing regulations in a manner that both supports and protects the interests of children with disabilities and their parents and facilitates ongoing compliance by the State and its public agencies with IDEA Part B and its implementing regulations.

OSEP's Conclusion

Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that absent the complainant's written agreement to withdraw the complaint based on the State's written acceptance of a proposal to resolve the complaint, FLDOE's practice of accepting a proposed resolution of the complaint without reviewing all relevant information and making an independent determination as to whether the public agency was violating a requirement of Part B of IDEA or its implementing regulations, was inconsistent with 34 C.F.R. § 300.152(a)(4). Further, under these circumstances, FLDOE's practice of not issuing a written decision that addressed each allegation in the complaint and contained findings of fact and conclusions and the reasons for the SEA's final decision, was inconsistent with 34 C.F.R. § 300.152(a)(5).

Required Actions/Next Steps

Within 90 days of the date of this letter, to ensure that the State is effectively implementing the IDEA Part B State complaint procedures in situations where it accepts a complainant's or district's proposal to resolve a complaint, the State must provide OSEP with the following documentation:

1. A copy of its revised procedures governing its State complaint resolution system to ensure that, unless it receives a written agreement from the complainant withdrawing the complaint:
 - a. When it adopts a district's or complainant's proposal to resolve a complaint, the Bureau of Exceptional Education and Student Services reviews all relevant information and makes an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA or its implementing regulations as required by 34 C.F.R. § 300.152(a)(4); and

- b. Issues a written decision that addresses each allegation in the complaint and contains findings s reasons for FLDOE’s final decision, as required by 34 C.F.R. § 300.152(a)(5).
2. Copies of complaint resolutions filed from January, 2019 through July 1, 2020, where the State accepted the district’s or complainant’s proposal to resolve the complaint and concluded the complaint resolution without the agreement of the complainant to withdraw the complaint and without complying with the requirements in 34 C.F.R. § 300.152(a)(4) and (5). Documentation for such complaints that the State sought the complainant’s permission to either formally withdraw the complaint or to reopen the complaint and issue a decision in accordance with the requirements in 34 C.F.R. § 300.152(a)(4) and (5).
3. Documentation of the withdrawal of complaints filed after July 1, 2020, if any, where FLDOE has accepted the proposal to resolve the complaint, and all complaint resolution decisions of complaints filed after July 1, 2020, if any, in which FLDOE has accepted the proposal to resolve the complaint.
4. A copy of the notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them of the State’s responsibility to comply with all applicable IDEA Part B complaint resolution procedures in 34 C.F.R. §§ 300.151–300.153, including in situations where a school district submits a proposal to resolve the complaint, or the complainant submits a proposed resolution of the problem with regard to a particular child to the extent known and available, and the complainant has not agreed to withdraw the complaint.

State Technical Assistance Materials: State Complaints–General Information; and Filing a State Complaint–Frequently Asked Questions

Factual Background

OSEP reviewed the Florida Department of Education, Bureau of Exceptional Education and Student Services, State Complaints–General Information (General Information) and Filing a State Complaint–Frequently Asked Questions (FAQs) documents, which were found on the State’s website. During the on-site visit, both OSEP and State officials reviewed the documents to discuss their purpose and use. While on-site, OSEP provided technical assistance to the State to point out language and or statements that are either missing and or misleading that would need to be revised to be consistent with IDEA.

The General Information document reads, “This guide explains the procedures for filing a State complaint within FLDOE’s Bureau.” Examples of the technical assistance that OSEP provided, as mentioned above, to revise and or clarify the language and or statements within the General Information document include:

1. Adding language that these State complaint procedures are “in accordance with IDEA”;
2. Adding language that State complaints may be filed by an individual, individuals or organization, “including one from another State,...”;
3. Adding language to clarify required information for a complaint alleging violations with respect to a specific child; and

4. Adding language clarifying what procedures must be followed when the State accepts the complainant's or district's proposal, or a combination of both, to resolve a State complaint.

The FAQ document contains responses to questions also related to FLDOE's State complaint procedures. Examples of the technical assistance that OSEP provided to revise and or clarify the language and or statements within the FAQ document include:

1. Adding language to expand who may file a State complaint;
2. Adding clarifying language related to allowable extensions of the timeline for resolving a State complaint; and
3. Adding language clarifying how a State complaint is investigated.

OSEP's Conclusion

Based on OSEP's review of the Florida Department of Education, Bureau of Exceptional Education and Student Services, State Complaints—General Information and Filing a State Complaint—Frequently Asked Questions documents, OSEP has determined that both documents are not fully consistent with the requirements in 34 C.F.R. §§ 300.151–300.153 and must be revised in those areas described above.

Required Actions/Next Steps

Within 90 days of the date of this letter, FLDOE must review the referenced documents to ensure that they accurately reflect the requirements of IDEA Part B. Within this 90-day period, FLDOE also must provide OSEP with a copy of the revised documents for OSEP's review and approval before they are finalized. OSEP is available to provide technical assistance should questions arise during FLDOE's review.

FLDOE's State Model Forms

Specific Requirements

Under 34 C.F.R. § 300.509, each SEA must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with 34 C.F.R. §§ 300.507(a) and 300.508(a) through (c) and to assist parents and other parties in filing a State complaint under 34 C.F.R. §§ 300.151 through 300.153. However, the SEA or LEA may not require the use of the model forms. Parents, public agencies, and other parties may use the appropriate model form described in this section, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in 34 C.F.R. § 300.508(b) for filing a due process complaint, or the requirements in 34 C.F.R. § 300.153(b) for filing a State complaint.

Factual Background

As part of its monitoring activity, OSEP reviewed the State's model forms required by the IDEA:

1. To assist parents and other parties in filing a State complaint in accordance with 34 C.F.R. §§ 300.151-300.153; and

2. To assist parents and public agencies in filing a due process complaint in accordance with 34 C.F.R. §§ 300.507(a) and 300.508(a)-(c).

At the time of OSEP's monitoring visit, OSEP found that both of the State's complaint model forms included information not required by IDEA, but the State did not specify on the model forms that this information was optional. For example, on the State complaint model form, the State requested the relationship of the complainant to the student, the student's age/grade, date(s) of alleged violation, and student exceptionality. The State complaint model form also included language that use of the model form was **required** to file a State complaint. The due process complaint form indicated that the complaint must include the student's age/grade, school district, date(s) of alleged violation, and student exceptionality. The due process complaint form also included language that use of the model form was required. Subsequent to OSEP's on-site monitoring visit, the State revised both of these model forms by indicating what information is required under IDEA and what information is optional, and removing from both of the model forms the language that use of the form was required. OSEP appreciates the State's prompt attention to these concerns. The State's model forms for filing a State complaint and a due process complaint can be found on the State's website at:

<http://www.fl DOE.org/academics/exceptional-student-edu/dispute-resolution/>.

OSEP's Conclusion

Based on OSEP's review of the State's model forms at the time of OSEP's on-site visit, OSEP found that the State required information in addition to what is required by IDEA but did not specify that the additional information that the State required was optional. The State's model forms for filing a State complaint and a due process complaint also did not indicate that use of the form itself was not required. FLDOE has subsequently revised both of its model forms to specify what information is required by IDEA and what information is optional and has clarified that use of the model form is not required.

Required Actions/Next Steps

No further action required.

Florida's Administrative Code related to Dispute Resolution Procedures and Notice of Procedural Safeguards

Applicable Requirements

Under 34 C.F.R. § 300.121, the State must have in effect policies and procedures to ensure that each public agency meets the procedural safeguards requirements in 34 C.F.R. §§ 300.500–300.536, and that children with disabilities and their parents are afforded these procedural safeguards. In connection with its monitoring of FLDOE's dispute resolution procedures, OSEP reviewed Florida's Administrative Code and the Florida Part B – Notice of Procedural Safeguards for Parents of Students with Disabilities (Notice).

FLDOE's Notice of Procedural Safeguards

In accordance with 34 C.F.R. § 300.504, the procedural safeguards notice must include a full explanation of all of the procedural safeguards available to the parents of a child with a disability under Part B of IDEA. Following the on-site visit, OSEP reviewed the State's Part B Notice of Procedural Safeguards for Parents of Students with Disabilities (Notice), revised as of May 2014,

which can be found at: <http://fldoe.org/core/fileparse.php/7690/urlt/0070135-procedural.pdf>. OSEP has reviewed the Notice and has identified a number of changes that must be made to the Notice to comply with Part B of IDEA. OSEP's analysis of the State's Notice is provided as an attachment to this monitoring report.

Procedural Safeguards Provisions in Florida's Administrative Code

OSEP's review of the Florida Administrative Code, Rule: 6A-6.03311—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities (Rule), was based on the document on the Florida Department of State website at:

<https://www.flrules.org/gateway/ruleno.asp?id=6A-6.03311>. Based on OSEP's review of the State's Rule, OSEP identified two areas that must be amended to ensure consistency with IDEA Part B requirements.

Factual Background

The State's Rule on mediation at 6A-6.03311(4) states: "The Department of Education shall provide parents of students with disabilities and school district personnel the opportunity to resolve disputes involving any matter related to a proposal or refusal to initiate or change the identification, evaluation, educational placement of the student or the provision of FAPE to the student, including matters arising prior to the filing of a request for due process, through a mediation process." This provision is inconsistent with 34 C.F.R. § 300.506(a), which provides that "Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving **any matter under this part**, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process" (emphasis added). The requirement that mediation be available to resolve *any matter arising under Part B* is broader than matters that could be the subject of a due process complaint requesting a due process hearing. See OSEP's July 23, 2013 *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Nos. A-3 through A-6, available at: <https://sites.ed.gov/idea/idea-files/osep-memo-and-qa-on-dispute-resolution/>. Additionally, mediation must be available to allow parties to disputes arising under Part B to resolve disputes through mediation. 34 C.F.R. § 300.506(a). Because under 34 C.F.R. § 300.507(a), the parties to disputes arising under Part B are parents and public agencies, FLDOE's Rule referencing "school district personnel" is inconsistent with the IDEA's reference to "public agency" and otherwise does not specify that such personnel may only file a due process complaint when acting in their official capacity on behalf of, or as the agent for, a public agency.

The State's Rule on State complaint procedures-6A-6.03311(5) provides that State complaints may be filed to resolve any complaint that a school district has violated a requirement of Part B of the IDEA or its implementing regulations. Under 34 C.F.R. § 300.151(a), the SEA must resolve any complaint filed by an organization or individual, including one from another State, that meets the requirements of 34 C.F.R. § 300.153. Under 34 C.F.R. § 300.153(b)(1), the complaint must include a statement alleging that a public agency has violated a requirement of Part B of IDEA or the IDEA Part B regulations. The term public agency, which includes entities in addition to school districts, is defined in 34 C.F.R. § 300.33 as including the SEA, LEAs, Educational Service Agencies (ESAs), nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. For a further explanation of how this requirement is implemented, see Q&A B-12 of OSEP's

July 23, 2013 *Questions and Answers on IDEA Part B Dispute Resolution Procedures*. Rule 6A-6.03311(5) regarding State complaint procedures does not specify that State complaints may be filed to resolve any complaint that a public agency has violated a requirement of Part B of the IDEA or the IDEA Part B regulations, consistent with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1).

OSEP's Conclusions

Based on the review of the Florida Administrative Code, Rule: 6A-6.03311—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities, OSEP has determined that the following provisions are inconsistent with Part B of the IDEA:

1. Florida's Rule 6A-6.03311(4) regarding mediation is inconsistent with 20 U.S.C. § 1415(e)(1) and 34 C.F.R. § 300.506 because it limits matters that can be the subject of mediation to matters that can be the subject of a due process complaint. In contrast, IDEA provides that mediation must be available to resolve any matter arising under Part B of IDEA, including matters arising prior to the filing of a due process complaint.
2. Florida's Rule 6A-6.03311(4) also provides that mediation must be available to parents and school district personnel. However, IDEA provides that mediation must be available to parties to disputes under Part B of IDEA, which are parents and public agencies, not merely school district personnel.
3. Florida's Rule 6A-6.03311(5) regarding State complaints is inconsistent with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1), because it provides that a complaint may be filed alleging only that a school district has violated a requirement of Part B of IDEA or the IDEA Part B regulations, while the IDEA Part B regulations provide that a complaint may allege that a public agency has violated a requirement of Part B of IDEA or the IDEA Part B regulations. The term "public agency" is defined in 34 C.F.R. § 300.33 to include entities in addition to school districts that are responsible for providing education to children with disabilities.
4. Based on OSEP's review of the State's Part B Notice of Procedural Safeguards for Parents and students with Disabilities, OSEP has also determined that the State must revise its Notice to ensure that it includes a full explanation of the procedural safeguards available to the parents of a child with a disability, as required by 20 U.S.C. § 1415(d) and 34 C.F.R. § 300.504(c). That analysis is set out in an attachment and is incorporated by reference herein.

Required Actions/Next Steps

Within 90 days of the date of this letter, the State must provide:

1. A plan to revise the Florida Administrative Code, Rule: 6A-6.03311(4) and (5)—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities, in accordance with OSEP's conclusions set forth above, to ensure IDEA requirements are addressed with respect to: matters that can be the subject of a mediation; the parties to mediation; and, that a State complaint may allege that a public agency, as defined in 34 C.F.R. § 300.33, has violated a requirement of Part B of IDEA or the IDEA Part B regulations.

2. A written assurance that pending all necessary amendments to the referenced rules, FLDOE will ensure that the State and its public agencies implement mediation under 34 C.F.R. § 300.506 and the State complaint procedures in accordance with 34 C.F.R. §§ 300.151(a) and 300.153(b)(1), consistent with OSEP's analysis and conclusions.
3. A plan to revise its Notice of Procedural Safeguards to include a full explanation of the procedural safeguards available to the parents of a child with a disability, as set forth in 20 U.S.C. § 1415(d) and 34 C.F.R. § 300.504(c), to be consistent with the requirements in IDEA and OSEP's analysis in the attachment to this monitoring report.
4. A copy of a memorandum or other notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that the State will be amending the Florida Administrative Code, Rule: 6A-6.03311(4) and (5)—Procedural Safeguards and Due Process Procedures for Parents and Students with Disabilities in the manner set forth above.
5. A copy of the memorandum or notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that FLDOE will be revising its Notice of Procedural Safeguards to be consistent with Part B of IDEA, as set forth in the attachment to this monitoring report.

FLDOE's Implementation of Requirements Related to a Parental Request for an IEE at Public Expense and Ensuring Prior Written Notice to Parents Making Such Requests

Specific Requirements

A parent has the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to certain conditions. If a parent requests an IEE at public expense, the public agency must, without unnecessary delay, either: (i) initiate due process procedures under 34 C.F.R. §§ 300.507 through 300.513 to show that its evaluation is appropriate; or (ii) ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 C.F.R. §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. 34 C.F.R. § 300.502.

Under 34 C.F.R. § 300.503(a), a public agency must provide to the parent a written notice that meets the content requirements in 34 C.F.R. § 300.503(b) a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child.

Factual Background

Prior to the on-site visit, OSEP had been contacted by some advocates and parents who raised concerns about FLDOE's implementation of requirements related to independent educational evaluations (IEEs) at public expense under 34 C.F.R. § 300.502 and the prior written notice required under 34 C.F.R. § 300.503.

As noted above, OSEP conducted interviews with a group of LEA Directors and with SEA personnel to explore how LEAs respond to parental requests for IEEs at public expense, and how and when the required prior written notice is provided to those parents. In addition, OSEP reviewed the documentation provided by FLDOE of the training it had conducted with its LEAs on both of these issues, as well as the State's documentation of responses to IEE requests. The

interviews and documentation confirmed that the State and its LEAs have policies, procedures, and practices related to IEEs and prior written notice that are consistent with IDEA.

Required Actions/Next Steps

No further action required.



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

**OSEP's Analysis of the Florida Part B —
Notice of Procedural Safeguards for Parents of Students with Disabilities**

Legal Requirements

Pursuant to 20 U.S.C. § 1415(d) and 34 C.F.R. § 300.504, a public agency must provide parents of children with disabilities a notice of procedural safeguards.

Specifically, under 34 C.F.R. § 300.504(c), the procedural safeguards notice must include a full explanation of all of the procedural safeguards available under 34 C.F.R. § 300.148, 300.151 through 300.153, 300.300, 300.502 through 300.503, 300.505 through 300.518, 300.530 through 300.536, and 300.610 through 300.625 relating to — (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to education records; (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including— (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve the complaint; and (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; (6) The availability of mediation; (7) The child's placement during the pendency of any due process complaint; (8) Procedures for students who are subject to placement in an interim alternative educational setting; (9) Requirements for unilateral placement by parents of children in private schools at public expense; (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals (if applicable in the State); (12) Civil actions, including the time period in which to file those actions; and (13) Attorneys' fees. OSEP reviewed Florida's Part B Notice of Procedural Safeguards available to parents of Students with Disabilities (Notice), revised as of May 2014, which can be found at: <http://fldoe.org/core/fileparse.php/7690/urlt/0070135-procedural.pdf>. OSEP's analysis identifies the revisions that FLDOE must make to its explanations of procedural safeguards to ensure that its Notice is consistent with IDEA Part B, and provides OSEP's recommendations for revisions, as appropriate.

General Comments

- Florida has included information about equitable services for parentally-placed private school children with disabilities in this Notice. OSEP notes that IDEA does not require that the notice of procedural safeguards under 34 C.F.R. § 300.504 include an explanation of the procedural safeguards that apply to parents of parentally-placed private school children with disabilities as defined in 34 C.F.R. § 300.130. That definition expressly excludes children placed in private schools by their parents when FAPE is at issue, and information about unilateral placement by parents in private schools when FAPE is at issue is a required component of the procedural safeguards notice. OSEP recommends that the State consider whether including information about IDEA's equitable services provisions in a Notice of Procedural Safeguards could be confusing to

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parents, who could get the mistaken impression that the procedural safeguards that are applicable to children with disabilities and their parents in public schools also apply to them. If the State does decide to retain the information about IDEA’s equitable services provisions, OSEP notes that the information that has been included in the Notice is incomplete. OSEP would be glad to discuss this matter if the State wishes to retain this portion of its Notice. See pages 4 and 20 of Florida’s Notice.

GENERAL INFORMATION - Pages 1 through 4 of Florida’s Notice

PRIOR WRITTEN NOTICE — 34 C.F.R. § 300.503

- On page 1 of the Notice, the State does not fully address 34 C.F.R. § 300.503(a). This provision provides that written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. Therefore, the State must revise the Notice to address this. This could be done by adding the words “a reasonable time” prior to the words “whenever it” in the lead-in to the language in the subsection “Notice.”

PARENTAL CONSENT — 34 C.F.R. § 300.300 - Pages 2 through 4 of Florida’s Notice

Consent for initial evaluation

- Under 34 C.F.R. § 300.300(a), a public agency must obtain parental consent for an initial evaluation, after providing notice consistent with 34 C.F.R. §§ 300.503 and 300.504. These notices include prior written notice and notice of procedural safeguards. Accordingly, the first sentence of the explanation on page 2 of the Notice must be revised to address this and to read consistent with the following:

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and this notice of procedural safeguards and without obtaining your consent as described under the heading Parental Consent.

Parental consent for the initial provision of services

- Page 3 of the State’s Notice states that “your school district may not use mediation or due process hearing procedures in order to obtain agreement or a ruling that the special education and related services (recommended by your child’s IEP team) may be provided to your child without your consent.” However, the consent required by 34 C.F.R. § 300.300(b) is for the initial provision of special education and related services generally and is not consent for the exact program of services to be provided to the child. If the State intends to reflect the IDEA Part B requirement for parent consent for the initial provision of services, the State must remove the language in the parenthetical. However, if the State intends to reflect a requirement for consent for services recommended by your child’s IEP Team, the State should revise the Notice to clarify that in Florida, the parent is informed of the services recommended for their child in the IEP before providing consent, and the parent consents to the initial IEP Team’s recommendation. This is different from parental consent for the initial provision of special education and related services under 34 C.F.R. § 300.300(b).

Parental consent for specific actions

- On page 3 of the State’s Notice, under the heading “Parental consent for specific actions,” the State should revise both the heading and the text of the first sentence to specify in Florida when consent is required for specific actions. The heading could be revised to read: “Parental consent for specific actions in Florida.” The first sentence of the text could read: “In Florida, the school district must obtain your consent...”

Parental consent for reevaluations

- Under 34 C.F.R. § 300.300(c)(1)(ii) if the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 34 C.F.R. § 300.300(a)(3). The last sentence in this section, on page 3 of this Notice, must be revised to read consistent with the following:

If you refuse to consent to your child’s reevaluation, the school district may, but is not required to, pursue your child’s reevaluation by using the consent override procedures (mediation or due process complaint and hearing procedures). As with consent for initial evaluations, your school district does not violate its child find and evaluation obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

Other consent requirements

- Page 4 of the State’s Notice lists the two situations in which the school district is not required to obtain parental consent. Following the list, and before the note on the requirements in Florida, OSEP recommends that the State add a heading “Additional State consent requirements.”

REVOCATION OF PARENTAL CONSENT — 34 C.F.R. § 300.300(b)(4) - Page 5 of Florida’s Notice

- To provide greater clarity for parents, OSEP recommends that the State move this section to follow the “Parental consent” section, so that it precedes the “Independent educational evaluations” section.

CONFIDENTIALITY OF INFORMATION - Pages 5 through 7 of Florida’s Notice

ACCESS RIGHTS — 34 C.F.R. § 300.613

- At the top of page 6 of the State’s Notice, the State uses individual educational plan instead of individualized education program. To be consistent with Part B of the IDEA, and avoid confusion, the State should change the reference to an individualized education program.
- The State’s Notice specifies that access to education records must be provided in no case more than 30 calendar days after the parent has made a request. This is an additional protection for parents, because under 34 C.F.R. § 300.613(a), the school district must comply with the request to access a child’s education records without unnecessary delay, but in no case later than 45 days after the request is made. If the State wishes to reflect the IDEA requirement, the text needs to be revised consistent with the timeline in 34 C.F.R. § 300.613(a). But if the State wishes to retain the 30-day time period, the text

should be revised to indicate that the 30-calendar-day timeline is a requirement under Florida law. See page 6 of Florida’s Notice.

MEDIATION - Pages 7 and 8 of Florida’s Notice

GENERAL INFORMATION — 34 C.F.R. § 300.506

Requirements

- Page 8 of the State’s Notice reads “Both the parent and the school district may be required to sign a confidentiality pledge prior to the commencement of the mediation process.” Although the IDEA Part B regulations require that a mediation agreement contain a statement that discussions during the mediation process must remain confidential and may not be used as evidence in a due process hearing or civil proceeding, a school district may not require a parent to sign a confidentiality pledge as a condition of entering into mediation. 34 C.F.R. § 300.506(b)(6) and (8). See also Question A-26 in OSEP’s July 23, 2013 *Questions and Answers on Procedural Safeguards and Due Process Procedures For Parents and Children with Disabilities*, and 71 Fed. Reg. 46696. Therefore, the State must revise its explanation to clarify that a district may ask, but may not require, a parent to sign a confidentiality pledge at the commencement of the mediation process.

Impartiality of mediator

- 34 C.F.R. § 300.506(c)(1)(i) provides that a mediator may not be an employee of the SEA or the LEA or State agency that is involved in the education or care of the child. The Notice explains that in Florida, a mediator may not be an employee of an LEA or State agency that receives IDEA funds. Florida should revise its Notice to clarify that this is a requirement under Florida law. See page 8 of Florida’s Notice.

STATE COMPLAINT PROCEDURES - Pages 8 and 9 of Florida’s Notice

ADOPTION OF STATE COMPLAINT PROCEDURES — 34 C.F.R. § 300.151

Remedies for denial of appropriate services

- On page 8 of the Notice, the State does not fully address 34 C.F.R. § 300.151(b)(1) because the numeral one does not include the required parenthetical: (such as monetary reimbursement or compensatory services). Therefore, the State must revise the Notice to read consistent with the following: “The failure to provide appropriate services, including corrective action appropriate to address the needs of the student (such as monetary reimbursement or compensatory services);...”

DUE PROCESS HEARING REQUEST PROCEDURES - Pages 9 through 12 of Florida’s Notice

- The State refers to a due process hearing request throughout this section. However, under 34 C.F.R. § 300.507(a), a parent or public agency must file a due process complaint to request a due process hearing. Therefore, FLDOE must explain that the term “due process hearing request” refers to the filing of a due process complaint under 34 C.F.R. §§ 300.507(a) and 300.508(a)–(c) to request a due process hearing under 34 C.F.R. § 300.511 or an expedited due process hearing regarding a disciplinary matter under 34 C.F.R. § 300.532. See pages 9 through 12 of Florida’s Notice.

FILING A DUE PROCESS HEARING REQUEST — 34 C.F.R. § 300.507

General

- Page 10 of the State’s Notice describes expedited due process hearings, and states: “[t]he hearing must begin within 20 school days following receipt of your request.” However, 34 C.F.R. § 300.532(c)(2) requires that the expedited due process hearing must occur within 20 school days of receipt of the parent’s request. Thus, the State must revise its Notice by deleting the word “begin” and replacing it with “occur.” Additionally, it is not clear from the structure of the State’s Notice that the 20-school-day timeline only applies in the case of expedited due process hearing requests. OSEP recommends that the State reorganize the Notice to avoid confusion by discussing requests for expedited due process hearings separately from requests for hearings that are not expedited.

DUE PROCESS HEARING REQUESTS — 34 C.F.R. § 300.508 - Pages 10 through 12 of Florida’s Notice

Content of the due process hearing request

- On page 10 of the Notice, the State lists the content required for a due process complaint requesting a due process hearing. Both numbers 3 and 4 require the due process hearing request to include the name of the student’s school. However, under 34 C.F.R. § 300.508(b), the due process hearing request must include the name of the school the student is attending. Therefore, the State must revise numbers 3 and 4 to clarify that the name of the school refers to the school that the student is attending.

Notice required before a hearing on a due process hearing request

- To clarify that a parent or public agency must file a due process complaint to request a due process hearing, this sentence (see page 10 of Florida’s Notice) must be revised to read consistent with the following: “You or the school district may not have a hearing on the due process complaint until you or the school district (or your attorney or the school district’s attorney) files a due process hearing request that includes the information listed above.”

Due process hearing request amendment

- The State’s Notice is missing most of 34 C.F.R. § 300.508(d). Therefore, the State must revise this section of its Notice by adding language that is consistent with the following:
 - a. 34 C.F.R. § 300.508(d)(2)
 - i. Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
 - b. 34 C.F.R. § 300.508(d)(3)
 - i. A party may amend its due process complaint only if— (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to § 300.510; or (ii) The hearing officer grants permission, except that the

hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

- c. 34 C.F.R. § 300.508(d)(4)
 - i. If a party files an amended due process complaint, the timelines for the resolution meeting in § 300.510(a) and the time period to resolve in § 300.510(b) begin again with the filing of the amended due process complaint.

MODEL FORMS — 34 C.F.R. § 300.509 - Page 11 of Florida’s Notice

- On page 11 of the Notice, the State does not fully address 34 C.F.R. § 300.509(b). The Notice permits the use of the State’s model form or another appropriate model form, provided it contains the required information for filing a due process hearing request or state complaint. However, 34 C.F.R. § 300.509(b) permits a parent to use another form or other document in filing a due process hearing request or state complaint, so long as the other form or other document meets the content requirements in § 300.508(b) for filing a due process complaint or § 300.153 for filing a State complaint. Therefore, the State must revise the following sentence to read consistent with the following: “In fact, you can use this form or another form or other document, provided it contains the required information for filing a due process hearing request or state complaint.”

STUDENT’S PLACEMENT DURING DUE PROCESS PROCEEDINGS — 34 C.F.R. § 300.518 - Page 11 of Florida’s Notice

- While the State’s Notice does address 34 C.F.R. § 300.518(a)-(c), the State does not address 34 C.F.R. § 300.518(d). Therefore, the State must add language consistent with the following to this section:

If a hearing officer in a due process hearing conducted by the State Educational Agency agrees with you that a change of placement is appropriate, that placement must be treated as your child’s current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

DUE PROCESS HEARINGS - Pages 12 through 14 of Florida’s Notice

IMPARTIAL DUE PROCESS HEARING — 34 C.F.R. § 300.511

Impartial Hearing Officer (i.e., ALJ)

- The State should specify on page 12 of its Notice that in Florida an impartial hearing officer is referred to as an Administrative Law Judge (ALJ).

HEARING RIGHTS — 34 C.F.R. § 300.512

Parental rights at hearings

- On page 13 of the Notice, the State does not fully address 34 C.F.R. § 300.512(a)(4), which requires that a written, or at the option of the parent, an electronic verbatim record of the hearing, be provided at no cost. Although the State’s Notice provides that the parent has the right to have a record of the hearing at no cost, it does not specify that the record must be a verbatim record, which may be provided either in writing or

electronically, at the parent’s option. Therefore, the State must revise its Notice consistent with the requirements in 34 C.F.R. § 300.512(a)(4).

HEARING DECISIONS — 34 C.F.R. § 300.513(d)

Findings and decision to advisory panel and general public

- Page 14 of the State’s Notice places this obligation on “The SEA or the school district (whichever was responsible for your hearing).” However, because Florida is a one-tier state, it is only the SEA that is responsible for the hearing. Thus, the State must revise its Notice by removing the reference to “school district.”

APPEALS - Pages 14 and 15 of Florida’s Notice

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS — 34 C.F.R. § 300.515

- On page 14 of the State’s Notice, the State must remove “And Reviews” from the heading “Timelines and Convenience of Hearings and Reviews” because in Florida, the SEA is responsible for conducting the hearing, and there are no State-level reviews.

PROCEDURES WHEN DISCIPLINING STUDENTS WITH DISABILITIES - Pages 15 through 19 of Florida’s Notice

AUTHORITY OF SCHOOL PERSONNEL — 34 C.F.R. § 300.530

Services

- On page 16 of the Notice (first sentence of the third paragraph of this section), the State must clarify that a child with a disability who is removed from the child’s current placement pursuant to 34 C.F.R. § 300.530(c) or (g) must receive services according to 34 C.F.R. § 300.530(d). Therefore, the State must revise this section to read consistent with the following:

A student with a disability who is removed from the student’s current placement for more than 10 school days, and the behavior is not a manifestation of the child’s disability, or who is removed under special circumstances, must:...

- In the fourth paragraph of this section, the State specifies that school personnel, in consultation with the student’s special education teacher(s), determine the extent that services are needed if the removal is not a change of placement. 34 C.F.R. § 300.530(d)(4) requires that school personnel, in consultation with at least one of the child’s teachers, make the determination as to the extent that services are needed for the child when the removal is not a change in placement. Because Florida uses special education teacher(s), OSEP recommends that the Notice indicate this is a Florida requirement. However, if Florida wishes to adopt the IDEA requirement, it must revise the language consistent with 34 C.F.R. § 300.530(d)(4) to refer to consultation of school personnel with “at least one of the child’s teachers.”