



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

September 29, 2023

Russell D. Johnston
Deputy Commissioner
Massachusetts Department of Elementary
and Secondary Education
75 Pleasant Street
Malden, MA 02148
Russell.Johnston@state.ma.us

Dear Deputy Commissioner Johnston:

Over the last several months, the United States Department of Education's Office of Special Education Programs (OSEP) received a number of concerns from stakeholders, including advocacy groups, local educational agency (LEA) personnel, local special education parent advisory councils and individual parents of children with disabilities in Massachusetts. As we have discussed during our monthly meetings, these stakeholders raised the question as to whether the Massachusetts Department of Elementary and Secondary Education (DESE) has a system reasonably designed to monitor its LEAs to ensure compliance with Part B of the Individuals with Disabilities Education Act (IDEA), as required under 34 C.F.R. § 300.600 of the regulations implementing Part B. Stakeholders raised concerns regarding the State's dispute resolution system and monitoring process (34 C.F.R. §§ 300.149, 300.151, and 300.152), State guidance on and LEA implementation of the requirements regarding Child Find and Evaluations (34 C.F.R. §§ 300.301-300.306), and oversight of the State-approved special education schools, referred to as 766 approved private schools (34 C.F.R. § 300.129 and §§ 300.146-300.147). The specific issues raised are summarized below.

State Complaints

Constituents, both parents and LEA representatives, raised concerns about the scope of allowable State complaints in Massachusetts. Specifically, stakeholders allege that DESE only issues decisions on procedural violations and dismisses more substantive allegations raising a denial of a free appropriate public education (FAPE). Parents and advocates also raised concerns regarding DESE's State complaint investigation procedures and whether such investigations include activities beyond LEA record review. Finally, stakeholders have raised questions about the tracking of State complaints, how the State is ensuring State complaint decisions are implemented, and whether the parent retains the right to file a due process complaint after a State complaint investigation is completed. Parents and advocates have cited delays in the issuance of written decisions and have expressed concern about their ability to enforce the required actions in the State complaint decisions.

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

Under 34 C.F.R. § 300.152, the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an on-site investigation, if the State educational agency (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 IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains (i) findings of fact and conclusions; and (ii) the reasons for the SEA's final decision.

In addition, it is the Department's long-standing position that State complaints may include substantive violations, including challenging a public agency's eligibility determination and any allegations regarding the denial of FAPE. This is true even if the SEA believes that the parent should file a due process complaint against the LEA or that the due process hearing process is a more appropriate mechanism to resolve such disputes. See OSEP [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (July 23, 2013), Question and Answer B-7.

Once a written decision on the State complaint is issued, the SEA must ensure that the public agency involved in the complaint implements the written decision in a timely manner. The SEA's State complaint procedures must include procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. 34 C.F.R. § 300.152(b)(2). To ensure corrective action and pursuant to its general supervisory responsibilities in 34 C.F.R. §§ 300.149 and 300.600, the SEA must inform the public agency that is involved in the complaint of any findings of noncompliance and the required corrective action and ensure that the corrective action is completed as soon as possible and within the timeframe specified in the SEA's written decision, and in no case later than one year after the State's identification of the noncompliance. 34 C.F.R. § 300.600(e). Finally, the Department has stated if the issue is still in dispute following a State complaint decision, the parent or public agency may, if they have not already done so, use mediation under 34 C.F.R. § 300.506 or file a due process complaint to request a due process hearing in accordance with 34 C.F.R. §§ 300.507-300.508. See OSEP [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (July 23, 2013), Question and Answer B-32.

Based on the concerns from stakeholders and OSEP's review of State-submitted dispute resolution data, publicly available State policies, and examples of State complaint decisions, OSEP is concerned about the decrease in the number of timely State complaint decisions and the

increase in the number of pending State complaints.¹ In addition, given the significant decrease in the number of State complaint decisions with findings, and based on a review of State complaint decisions with child-specific allegations, OSEP believes additional information is needed to review how child-specific allegations are investigated beyond an LEA report and how child-specific remedies are determined and implemented. Therefore, OSEP is requesting that DESE submit the following information within 60 days of the date of this letter:

- Policies and procedures addressing the investigation of State complaints;
- Any protocols or trainings provided to State investigators regarding the investigation of State complaints;
- Current tracking logs for State complaints;
- Random sample of 20 dismissed or withdrawn State complaints from the last three years;
- Policies and procedures related to the resolution of State complaints; and
- Evidence of completion (e.g., tracking logs) of corrective actions required by written decisions on State complaints.

Child Find

Stakeholders have expressed concerns regarding child find activities at the LEA level. They have collected and reviewed an extensive number of LEA policies and procedures and question whether these procedures are consistent with IDEA. Specifically, stakeholders report long delays in obtaining eligibility for students under IDEA, including students with specific learning disabilities. They also report the delay in completing evaluations due to the implementation of response to intervention (RTI) activities. We acknowledge that DESE recently revised the assurances it requires LEAs to submit annually to receive an IDEA Part B subgrant, titled “Conditions for Funding IDEA Part B Funding Certification.” While these assurances include child find requirements and evaluation requirements, it is unclear how DESE monitors LEAs on the implementation of these requirements, in particular policies, procedures and practices regarding LEAs’ referrals for evaluation as well as LEAs’ use of RTI.

To effectively monitor the implementation of Part B of the IDEA, the State must have policies and procedures that are reasonably designed to ensure that the State can meet its general supervisory responsibility as required in 34 C.F.R. § 300.149 and its monitoring responsibilities in 34 C.F.R. §§ 300.600 through 300.602. Under 34 C.F.R. § 300.600(b), the State’s monitoring activities must primarily focus on:

1. Improving educational results and functional outcomes for all children with disabilities, and

¹ The State reported in its School Year (SY) 2021-22 IDEA Part B Dispute Resolution data that the number of written State complaints increased from 607 in SY 2020-2021 to 649 in SY 2021-2022 while the number of reports within timelines (i.e., written State complaint decisions issued within the 60-day timeline) decreased from 319 to 130 and the number of pending State complaints increased from 12 to 117 between SY 2020-2021 and SY 2021-2022. In addition, the number of reports (i.e., written State complaint decisions) with findings of noncompliance decreased from 196 to 34 between SY 2020-2021 and SY 2021-2022.

2. Ensuring that public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 300.600(d), the State also must ensure that when it identifies noncompliance with IDEA Part B requirements by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. 34 C.F.R. § 300.600(e).

Based on the concerns from stakeholders and OSEP's review of publicly available information regarding implementation of child find requirements in the State, including applicable guidance and information on the State's tiered focus monitoring system, OSEP is requesting that DESE submit the following information within 60 days of the date of this letter:

- State's policies and procedures for conducting child find, including referrals for evaluations;
- State's policies and procedures to ensure each public agency conducts a full and individual initial evaluation in a timely manner;
- State's policies, procedures, and practices regarding the use of RTI or other multi-tiered system of supports;
- State's criteria for determining whether a child has a specific learning disability;
- State's monitoring protocols addressing child find (including the use of RTI), referral for evaluations, evaluation procedures and eligibility determinations; and
- Examples of monitoring reports, State complaint decisions, due process hearing decisions, or other documentation issued within the last three years that include findings of noncompliance related to child find.

State-approved Special Education Schools

Stakeholders, advocates and individual parents also raised concerns regarding the State's oversight of the State-approved private special education schools, referred to as "766 schools," which are schools where children with disabilities are placed by public agencies in order to make FAPE available to such children. Their concerns include the oversight of the placing LEA to ensure FAPE after a child is placed in a 766 school, whether the private school can implement the child's individualized education program (IEP) as written upon acceptance to the school, and whether there are qualified personnel available in the private school to provide the required special education and related services. In addition, parents and advocates have alleged that IEPs are rewritten after enrollment to include services based on the resources the private school currently has available, rather than the individual needs of the child. Parents reported they are afraid to address their concerns with the private schools and LEAs for fear of retaliation by private schools and the LEA, which can include loss of the student's current placement.

The State's 766 schools are monitored by the Office of Approved Special Education Schools (OASES). This office is separate from the State's special education monitoring office and has specific standards for 766 schools. Based on OSEP's review of these standards, most criteria appear to address the certification of the school (e.g., health and safety standards), rather than the implementation of IDEA requirements.

Under 34 C.F.R. § 300.129, the State must have in effect policies and procedures that ensure that

LEAs, and, if applicable, the SEA, meet the private school requirements in 34 C.F.R. §§ 300.130 through 300.148. Under 34 C.F.R. § 300.146, each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency is provided special education and related services in conformance with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.325; and at no cost to the parents. The SEA also must ensure these children are provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of Part B of IDEA, except for 34 C.F.R. § 300.156(c), and have all of the rights of a child with a disability who is served by a public agency. In implementing 34 C.F.R. § 300.146, the SEA must:

1. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;
2. Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and
3. Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. 34 C.F.R. § 300.147.

Finally, under 34 C.F.R. § 300.325(b), if the private school or facility initiates and conducts an IEP Team meeting for a child placed in the private school by a public agency, the public agency must ensure that the parents and an agency representative:

1. Are involved in any decision about the child's IEP; and
2. Agree to any proposed changes in the IEP before those changes are implemented.

Even if a private school or facility implements a child's IEP, responsibility for compliance with Part B of IDEA remains with the public agency and the SEA. 34 C.F.R. § 300.325(c).

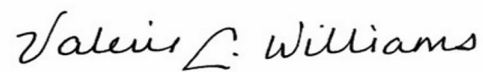
Based on the concerns from stakeholders, including LEA personnel, and a review of publicly available information regarding the State's 766 schools, including applicable monitoring information, OSEP is requesting that DESE submit the following information within 60 days of the date of this letter:

- State's policies and procedures regarding the placement of students in 766 schools;
- State's policies and procedures regarding the monitoring of 766 schools, including any monitoring protocols;
- Samples of any memorandum of understanding or other agreements between the SEA/LEAs and 766 schools; and
- Examples of monitoring reports, State complaint decisions, due process hearing decisions, or other documentation related to 766 schools that include findings of noncompliance related to IDEA issued within the last three years.

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We appreciate your prompt attention to these important issues and look forward to receiving DESE's written response. If you have any questions regarding the above, please contact Laura Duos, your State Lead, at Laura.Duos@ed.gov.

Sincerely,

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

Valerie C. Williams

Cc: Jamie Camacho, State Director of Special Education