

DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT OFFICE OF SPECIAL EDUCATION PROGRAMS U.S. DEPARTMENT OF EDUCATION

STATE	NEW YORK
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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS

DIRECTOR

February 29, 2024

By Email

James V. McDonald, M.D., M.P.H.
Commissioner
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, New York 12237

Email: James.McDonald@health.ny.gov

Dear Dr. McDonald:

The purpose of this monitoring report is to provide a summary of the results of the Differentiated Monitoring and Support (DMS) activities conducted by the U.S. Department of Education's (the Department) Office of Special Education Programs (OSEP). As part of its DMS process, States are monitored on their general supervision systems which encompass the States' responsibility to ensure that States and their subgrantees and contractors meet the requirements of the Individuals with Disabilities Education Act (IDEA). Those requirements include: 1) Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and 2) Ensuring that public agencies meet the program requirements under Parts B and C of IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for infants, toddlers, children, and youth with disabilities. During the DMS process¹ OSEP examined the State's policies and procedures and State-level implementation of these policies and procedures regarding the following monitoring priorities and components of general supervision:

- Monitoring and Improvement
- Data including the State Performance Plan/Annual Performance Report (SPP/APR)
- Fiscal Management: Single Line of Responsibility
- Dispute Resolution
- Provision of Early Intervention Services

This DMS monitoring report summarizes OSEP's review of IDEA Part C requirements regarding these general supervision monitoring priorities and components. OSEP conducted interviews with representatives from the New York State Department of Health (NYSDOH), the State lead agency (LA) that is responsible for administering New York's Early Intervention Program (NYEIP), through its Bureau of Early Intervention (BEI), during September 2022 through November 2022, and an onsite visit on November 29, 2022, through December 1, 2022. The interviews with NYSDOH staff included BEI's Director, Associate Directors and staff from its Provider Approval, Due Process and Monitoring Unit, Data and Program Evaluation Unit and its

¹ For additional information on DMS, see [Resources for Grantees - DMS](#).

Financial Planning and Policy Unit. In addition to interviews with NYSDOH staff, OSEP reviewed publicly available information, policies, procedures, monitoring reports, dispute resolution documents, and other related information that NYSDOH submitted to OSEP. Finally, OSEP solicited feedback from various groups of interested parties and representatives from early intervention service (EIS) programs ² that administer NYEIP at the local level in order to gather a broad range of perspectives on the State’s system of general supervision.³

Based on a review of available documents, information gathered, and interviews conducted, OSEP has identified thirteen findings of noncompliance with IDEA Part C requirements at the conclusion of our monitoring activities. OSEP is making the following findings, listed below, and described in more detail further in the monitoring report, including any required actions. OSEP’s findings, especially regarding failure to make IDEA Part C services available in a timely manner, are also reflected in the Office of the New York State Comptroller’s February 28, 2023, State Audit report, Oversight of the Early Intervention Program (State Audit).⁴

Finally, OSEP has not identified noncompliance in the data component; therefore, the data section is not included in the narrative below. OSEP’s review of monitoring priorities and components of general supervision did not include an examination of implementation IDEA Part C requirements by all the local programs within your State, and OSEP cannot determine whether the State’s systems are fully effective in implementing these requirements without reviewing data at the local level.

Summary of Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDINGS SUMMARY
1. Provision of Early Intervention Services	<p>1.1 OSEP finds that the State is unable to ensure that early intervention services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner as required by 34 C.F.R. §§ 303.112 and 303.342(e).</p> <p>1.2 OSEP finds that the State is unable to ensure that early intervention services that are needed by the child are identified on the individualized family service plan (IFSP) based on the unique needs of the child as required by 34 C.F.R. §§ 303.13(a), 303.322(c), and 303.344(d).</p> <p>1.3 OSEP finds that the State is unable to ensure that early intervention services are available in all geographic areas in the State, consistent with 34 C.F.R. § 303.207.</p>
2. Monitoring and Improvement	2.1 OSEP finds that the State does not identify noncompliance in a timely manner using its data system, as required under 34 C.F.R. §§ 303.120 and 303.700 through 303.702.

² NYSDOH has both EIS programs under 34 C.F.R. § 303.11 and EIS providers under 34 C.F.R. § 303.12.

³ Interviews were held with the following counties/municipalities that administer NYEIP at the local level: Erie, Clinton, Onondaga, Albany, Monroe, Steuben, and Nassau as well as with the New York City Department of Health and Mental Hygiene (NYC DOHMH).)

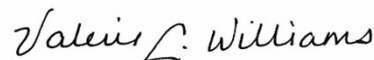
⁴ See the Office of the New York State Comptroller Report, [Oversight of the Early Intervention Program](#) (February 28, 2023) (State Audit).

MONITORING COMPONENT	FINDINGS SUMMARY
	2.2 OSEP finds that the State does not verify the correction of all findings of noncompliance related to IDEA Part C (beyond SPP/APR indicators) as required under 34 C.F.R. § 303.120 and its monitoring responsibilities in 34 C.F.R. § 303.700(e).
3. Fiscal Management	<p>3.1 OSEP finds that the State does not have a methodology, including policies and procedures, to track all State and local public funding sources to ensure compliance with the IDEA Part C Maintenance of Effort (MOE) requirements in 34 C.F.R. § 303.225(b).</p> <p>3.2 OSEP finds that the State has not consistently ensured that it coordinates all available resources as required under 34 C.F.R. § 303.120(b).</p> <p>3.3 OSEP finds that the State’s System of Payments (SOP) policy does not reflect the State’s practice as required by 34 C.F.R. §§ 303.203(b)(1), 303.510, 303.520, and 303.521.</p>
4. Dispute Resolution	<p>State Complaints</p> <p>4.1 OSEP finds that the State does not have written State complaint procedures that are reasonably designed to implement the dispute resolution requirements specific to:</p> <ul style="list-style-type: none"> a. A complaint filed by an organization or individual from another State as required by 34 C.F.R. § 303.432(a)(1). b. The resolution of State complaints which must include (1) the failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement) as required in 34 C.F.R. § 303.432(b)(1); and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families as required in 34 C.F.R. § 303.432(b)(2). c. Effective implementation of the LA’s final decision including technical assistance (TA) activities, negotiations, and corrective actions to achieve compliance as required in 34 C.F.R. § 303.433(b)(2). d. Extension of the 60 day timeline for State complaint resolution consistent with 34 C.F.R. § 303.433(b)(1). e. Set aside of written complaints being addressed in a due process hearing until the conclusion of the hearing as required in 34 C.F.R. § 303.433(c)(1).

MONITORING COMPONENT	FINDINGS SUMMARY
	<p>Mediation</p> <p>4.2 OSEP finds that the State has a form that does not allow parties to pursue mediation involving <i>any matter</i> under the Part C IDEA regulations as required under 34 C.F.R § 303.431(a).</p> <p>Due Process</p> <p>4.3 OSEP finds that the State does not ensure hearing officers possess knowledge of IDEA Part C requirements consistent with 34 C.F.R. § 303.435(a).</p> <p>4.4 OSEP finds that the State does not have a mechanism in place for tracking the implementation of due process hearing decisions by municipalities, contracting agencies, or providers consistent with 34 C.F.R. §§ 303.120 and 303.700.</p> <p>Procedural Safeguards</p> <p>4.5 OSEP finds that the State has not met its responsibility as the LA to ensure the effective implementation of the State’s procedural safeguards to include the LA and EIS providers in the Statewide system that is involved in the provision of early intervention services consistent with the requirements set forth in 34 C.F.R. § 303.400.</p>

We appreciate your efforts to ensure compliance and improve results for infants and toddlers with disabilities and their families. If you have any questions, please contact Susan Kauffman, your OSEP State Lead.

Sincerely,



Valerie C. Williams
 Director
 Office of Special Education Programs

cc: Raymond Pierce, Director, Bureau of Early Intervention
 Peter Baran, Associate Director, Bureau of Early Intervention
 Michael Iorio, Associate Director, Bureau of Early Intervention

Enclosure:
 DMS Monitoring Report
 Appendix

PROVISION OF EARLY INTERVENTION SERVICES

NYSDOH contracts with 57 counties (also referred to as "municipalities") and New York City (NYC)⁵ to ensure the local administration of the NYEIP. In this DMS Monitoring Report, OSEP refers to the 57 counties and NYC as 58 EIS programs under 34 C.F.R. § 303.11. NYSDOH reports in its SPP/APR on the local performance through these 58 EIS programs. Under New York Codes, Rules, and Regulations (NYCCR)⁶ all "individuals and agencies" must have an approved agreement with NYSDOH to deliver early intervention services in the State. NYSDOH is responsible for approving and entering into provider agreements with all EIS programs and providers, conducting oversight of the local implementation of NYEIP and maintains all enforcement authority over approved EIS programs and providers.⁷ All municipalities except for NYC provide service coordination, and all 58 EIS programs coordinate with NYSDOH-approved EIS providers to deliver early intervention services.

Consistent with 10 NYCRR 69-4, and NYSDOH's Early Intervention Administration Work Plan (October 1, 2021–September 30, 2026), local municipalities are responsible for ensuring implementation of several components of the NYEIP including, but not limited to: public awareness and child find activities, family-centered services, child and family outcomes, service delivery and natural environments (including, ensuring that services are individualized and delivered in accordance with the IFSP in an environment appropriate to meet the unique needs of the child), and administrative activities (including developing policies and procedures, record retention and transmitting data).

As part of its monitoring activities, OSEP conducted interviews with Early Intervention Officials⁸ and staff from seven local EIS programs including the NYC DOHMH, held discussions with, and reviewed written feedback from, Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs), including two virtual sessions with parents participating in NYEIP representing various regions of the State and NYC. The information gathered from these interviews raised significant concerns with the provision of early intervention services throughout the State.

Legal Requirements

As a condition of receiving assistance under IDEA Part C, each State must ensure that appropriate early intervention services are available to all infants and toddlers with disabilities and their families as required by 34 C.F.R. § 303.112. Each State must ensure that Part C services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner and that each eligible infant and toddler with a disability has available early intervention services that are identified as designed to meet his or her unique individual needs by the IFSP team as required by 34 C.F.R. §§ 303.13(a), 303.322(c), and 303.344(d). Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in 34 C.F.R. § 303.342(e). States also must ensure that resources are made available under IDEA Part C for all geographic areas within the State consistent with 34 C.F.R. § 303.207.

⁵ The NYC DOHMH administers NYEIP throughout the five boroughs of NYC: Manhattan (New York County), Brooklyn (Kings County), Queens (Queens County), The Bronx (Bronx County) and Staten Island (Richmond County).

⁶ See 10 NYCRR 69-4.5.

⁷ BEI's Provider Approval, Due Process and Monitoring Unit is responsible for these activities within NYSDOH.

⁸ Early Intervention Officials are designated by the chief elected official of the municipality (county) to administer NYEIP at the local level.

OSEP Analysis

Early Intervention Services Not Timely Provided

The State is not ensuring that early intervention services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner as required by 34 C.F.R. §§ 303.112 and 303.342(e).

IDEA requires that Part C services be provided as soon as possible after a parent provides consent under 34 C.F.R. § 303.342(e). New York has adopted a 30-day timeline for providing IDEA Part C services after parent consent.⁹ Prior to and during OSEP’s monitoring visit, OSEP heard from multiple sources about delays and waitlists for IDEA Part C services.

During the public input process, OSEP heard that Statewide EIS provider shortages have impeded the local municipality’s ability to provide early intervention services to all eligible infants and toddlers with disabilities and their families. During OSEP’s interviews, all municipalities interviewed reported delays and waitlists for the provision of early intervention services. Specifically, one municipality reported to OSEP that only 28 out of approximately 230 children with active IFSPs were receiving all the IDEA Part C services for which they were eligible in accordance with their IFSPs. The same municipality reported that there were 50 eligible children waiting to receive two or more early intervention services. Another municipality reported that on average it serves approximately 1,800 children and families and consistently has approximately 200 children waiting more than 30 days to receive early intervention services, with the greatest demand for services in the county being speech therapy (speech), occupational therapy (OT), and special education. Another municipality reported that after the initial referral of the child suspected of having a disability, referred families are told that evaluations to determine eligibility for early intervention services could take several months. The same municipality reported that if a child is found eligible, the county would not be able to provide early intervention services within the State’s 30-day timeline.

Staff from municipalities also reported in interviews with OSEP that the following practices are occurring:

- IDEA Part C services are being provided by any available EIS provider regardless of the specific early intervention service(s) listed on the IFSP and the specific discipline of the EIS provider.
- Some or all early intervention services on the IFSP are never initiated prior to an eligible infant or toddler with a disability exiting the program.

OSEP’s historical review of NYSDOH’s data under IDEA Part C SPP/APR Indicator 1 (timely provision of services) identified some concerns about how the State is exercising its general supervision responsibilities to obtain data on the timely provision of services. NYSDOH reported that its data system, referred to as the New York Early Intervention System (NYEIS), is used to collect data from local municipalities on the timely provision of IDEA Part C services. OSEP identified issues with three of the State’s nine, “discountable” or allowable reasons for delay due to exceptional family circumstances. OSEP noted that delays applied to those circumstances may be captured inconsistently with reported data. Those reasons included: “family exited EIP prior to service beginning,” “family received service however no claim data available,” and “intermittent

⁹ Under [10 NYCRR 69-4.11](#), the IFSP shall be in writing and include “the projected dates for initiation of services, which date must be as soon as possible but no later than 30 days after the parent provides written consent for the services in the IFSP or any subsequent amendments to the IFSP, and the anticipated duration of these services, provided however that: if the parent and other members of the IFSP team determine that one or more types of service(s) included in the IFSP must appropriately be initiated more than 30 days after the parent provides written consent for the services in the IFSP, such service(s) must be delivered no later than 30 days after the projected date of initiation of such service(s) as set forth in the IFSP.

service and/or frequency per IFSP team decision.” NYSDOH stated to OSEP that it can update and modify its current exceptional family circumstance categories to capture the reasons for delay consistent with IDEA SPP/APR reporting requirements for Indicator 1. The State’s Federal Fiscal Year (FFY) 2021 SPP/APR reported Indicator 1 data for timely provision of services more accurately represents and further substantiates the State’s struggles with providing early intervention services to all eligible infants and toddlers with disabilities.

After OSEP’s on-site monitoring visit, NYSDOH submitted, in February 2023, its FFY 2021 SPP/APR Indicator 1 timely provision of service data as 69.25 percent. The State explained that its FFY 2021 data demonstrated a decrease because families who did not consent to receive early intervention services through telehealth, and preferred in-person service delivery, and had to wait more than 30 days for service delivery were counted under “non-discountable” reasons for service delay.

NYSDOH attributes the inability to obtain in-person providers to, “Statewide provider shortages and many providers who are only willing to provide telehealth services, with many counties having difficulty locating providers to provide in-person services.” Additionally, in its SPP/APR narrative, NYSDOH reported that “there has been reluctance on the part of early intervention [service] providers to return to in-person service delivery” (since telehealth service was allowable during the COVID-19 pandemic) and that, “the current reimbursement rates for providers are the same for telehealth services and in-person services.” Further, during interviews with OSEP, the PTIs, CPRCs and parents in New York, reported that staff shortages and late referrals have resulted in significant waitlists. These concerns were also corroborated by the State Audit.¹⁰ The waitlists and early intervention service provision issues described above, demonstrate NYSDOH’s failure to ensure that appropriate early intervention services are timely provided to all infants and toddlers with disabilities and their families as required by the Federal IDEA Part C program in 34 C.F.R. §§ 303.112 and 303.342(e).

Early Intervention Services Needed are Not Identified on the IFSP

The State is not ensuring that early intervention services, that are needed by the child, are identified on the IFSP based on the unique needs of the child and family as required by 34 C.F.R. §§ 303.13(a), 303.322(c), and 303.344(d).

During OSEP’s monitoring visit, OSEP heard from multiple sources that:

- Early intervention services on IFSPs are tailored to EIS provider availability rather than individual child needs.
- Families are persuaded to accept telehealth in the interim or endure long wait times for early intervention services if EIS providers are not available to provide in-person early intervention services.
- In some regions, children and families must accept telehealth as the only modality of receiving early intervention services without regard to whether telehealth is the appropriate modality for providing services.

¹⁰ The [State Audit](#) (February 28, 2023) covers NYEIP performance from July 2018 through February 2022. The report found that children are not receiving services in a timely manner. Specifically, it noted that – (1) Of the approximately 95,000 children with an approved IFSP, almost 48,000 (51 percent) did not receive all the therapeutic [early intervention] services of which they were entitled to receive; (2) Of the nearly 48,000 children (stated above), about 3,000 (six percent) did not receive any of the therapeutic services authorized on their IFSP; and (3) Of the approximately 95,000 children with an approved IFSP, approximately 27,000 (28 percent) did not begin receiving early intervention services within 30 days of when they were authorized to start. On August 3, 2023, NYSDOH submitted its comments in response to the February 28, 2023, State Audit.

During interviews with OSEP, PTIs, CPRCs, and parents also reported that families are struggling to obtain in-person services. As described above, the State acknowledged in its FFY 2021 SPP/APR Indicator 1 data report on timely service provision its continued challenges in obtaining EIS providers who are available to provide in-person (instead of telehealth) early intervention services. The State must ensure that IFSP teams identify on the IFSP the early intervention services that are needed by the child and family based on the unique needs of the child as required by 34 C.F.R. §§ 303.13(a), 303.322(c), and 303.344(d).

Services are Not Available in All Geographic Areas

The State is not ensuring that early intervention services are available in all geographic areas in the State, consistent with 34 C.F.R. § 303.207.

During OSEP's monitoring, OSEP heard that families are being told that specific early intervention services are not available because of shortages of discipline-specific providers with disproportionate disparities existing in certain regions of the State to a greater extent than others. Additionally, all municipalities interviewed by OSEP reported Part C service challenges, with inner cities and rural regions being disproportionately impacted by service provider shortages.

During discussions with OSEP, NYSDOH shared that it maintains a "Central Directory" of the approved EIS providers municipalities to contact to coordinate early intervention services within their geographic catchment areas. EIS programs expressed frustration with the central directory, claiming the directory is not an accurate representation of early intervention providers that are available. OSEP heard from EIS programs that EIS providers may be approved by NYSDOH and listed in the directory, but that does not necessarily mean that the EIS provider is active and available to provide direct early intervention services. The State Audit¹¹ also supports this claim and further reported that:

- Municipal officials explained that [NYSDOH] does not remove [EIS] providers that are not accepting children in the municipalities' area from the directory, even when requested to do so.
- If the municipality removes [EIS] providers that are no longer providing services from the local directory, they are instructed to add the provider back when it is identified through NYSDOH's oversight activities, even if the [EIS] provider is not serving [in] the municipalities geographic region.
- Municipal officials expressed frustration with this [practice] from program staff and parents who are continually turned down by approved providers that are not actually offering services.
- The auditor also noted that about 1,800 (23 percent) of the approximately 7,800 service providers listed in the directory had not provided any [early intervention] services during the time of the audit.

As described above, NYSDOH is responsible for approving and entering into provider agreements with all EIS programs and providers and as noted in the State's Early Intervention Provider Agreement, between the EIS provider and NYSDOH, the EIS provider designates the service catchment area. While the agreement allows an approved EIS provider to work throughout the State, the EIS provider must identify the municipalities in which they are currently available to provide services and agrees that they can and will deliver services in the areas identified.¹²

OSEP's discussions with counties and other interested parties revealed that available EIS providers tend to provide Part C services only within geographic areas close to their homes, determine the modality of service

¹¹ See [State Audit](#) (February 28, 2023), Lack of Available Service Providers, p. 13.

¹² See the [New York State Department of Health, Bureau of Early Intervention: Early Intervention Provider Agreement](#) (effective 2018) p. 7.

provision they provide (e.g., virtual or in-person), and choose the locations in which they will provide Part C services. Specifically, due to poverty and provider safety concerns, securing EIS providers in particular neighborhoods of inner cities pose significant challenges, while due to the lack of reimbursement for mileage and extensive travel time, municipalities also have difficulty finding providers willing to provide services to families living in very rural areas.

As a result, EIS providers have begun to offer Part C services in community locations (often at libraries, community centers, or at the service providers' locations), and in group settings to be able to serve children and families that reside in hard-to-reach locations. Although efforts are being made by EIS providers to access these children and families, additional inequities exist for those families that are unavailable at the time a service is being offered and are unable to afford or obtain transportation to access early intervention services, further putting those children and families at a disadvantage.

During discussions with OSEP, NYSDOH, EIS programs and other interested parties, reported that a financial disincentive to provide in-person services has been created due to the State's reimbursement rates being the same regardless of the modality of service delivery (in-person or via telehealth). Counties and other interested parties further reported that this rate structure has impacted individualized service delivery decisions for children and families, due to service providers in certain regions only offering to provide early intervention services via telehealth. Additional barriers to accessing Part C services exist in circumstances in which telehealth early intervention is the only modality of Part C services offered or available. Specifically, this can negatively impact families that do not have access to or use technology, have unreliable internet service, and for those families that have government-supported telephone service (which have restrictions on use). OSEP also heard during interviews with municipalities and other interested parties, that families who are non-native English speakers face even more challenges accessing and receiving Part C services. These families experience increased wait times for evaluations and early intervention services due to interpreter shortages, and the costs for interpretation services. Municipalities also reported these issues leave EIS providers dependent on family members or members of the local community to assist in translation efforts.

OSEP shared the information gathered during these public input discussions, and NYSDOH acknowledged that provider capacity is a challenge and that current Medicaid reimbursement rates are insufficient to attract and retain service providers. Additionally, NYSDOH stated that current funding rates have contributed to a disincentive to provide services in-person and in particular geographic regions.

NYSDOH discussed some initiatives that are currently underway to address some of the issues NYEIP is facing. For example, NYSDOH reported that it holds bimonthly calls with all counties and monthly calls with NYC to increase communication and collaboration. NYSDOH also reported that they are working with the Statewide Early Intervention Coordinating Council (EICC) on provider capacity and have established a EICC Rate Setting and Provider Capacity Task Force to further evaluate this issue. The State is also updating the NYEIP regulations regarding qualifications for early intervention provider approval. NYSDOH stated that it will continue to support and advocate for increasing provider rates for the program and shared that it will be conducting outreach activities throughout the State at institutions of higher education to support recruitment efforts.

While OSEP appreciates the State's effort, as described above, there are significant concerns over the State's ability to provide Part C services to all eligible infants and toddlers with disabilities in the State, which was also supported by the concerns outlined in the State Audit. The auditor found Statewide disparities in access to

NYEIP and disproportionate access to [EIS] providers for children with IFSPs.¹³

The auditor also reported that:

- Although there are [EIS] provider shortages throughout the State, the issue is more “pronounced in some parts of the State than others.”
- Municipalities reported concerns around not having [EIS] providers available that speak the child’s native language but were unable to analyze data around this issue due to NYEIS not capturing the information.
- Municipalities stated that it is difficult to find [EIS] providers willing to travel to certain geographic areas within the region, and one municipality reported that its population is difficult to contact through electronic methods which was further exacerbated during the COVID-19 pandemic for families that did not have access to technology but used it out of necessity.

Under Section II.A.8 of New York’s FFY 2022 IDEA Part C Grant Application, NYSDOH provides an assurance that Part C resources are made available for all geographic regions in the State. As a result of the monitoring activities, OSEP attributes NYSDOH’s inability to ensure that Part C resources are made available for all geographic areas of the State as required by 34 C.F.R. § 303.207, in part, to the State’s funding structure, which provides a financial disincentive to provide in-person services particularly in rural areas and inner-city regions of the State which has resulted in underserved and hard-to-reach communities being disproportionately affected by early intervention service provider shortages that exist throughout the State.

Conclusion and Action Required

OSEP’s analysis is based on the documents and information provided by the State, interviews with State staff and other interested parties, and the State Audit. Based on this analysis, OSEP finds that the State is unable to ensure that:

- 1.1 Early intervention services are provided to all eligible infants and toddlers with disabilities and their families in a timely manner as required by 34 C.F.R. §§ 303.112 and 303.342(e).
- 1.2 Early intervention services that are needed by the child are identified on the IFSP based on the unique needs of the child as required by 34 C.F.R. §§ 303.13(a), 303.322(c), and 303.344(d).
- 1.3 Early intervention services are available in all geographic areas in the State, consistent with 34 C.F.R. § 303.207.

Required Actions

Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:

1. Updated policies and procedures documenting its process to ensure that that appropriate early intervention services are available to all infants and toddlers with disabilities and their families as required by 34 C.F.R. §§ 303.13(a), 303.112, 303.322(c), 303.342(e), and 303.344(d).
2. A description of how the State will make resources available to all geographic areas within the State as required under 34 C.F.R. § 303.207.

¹³ The auditor referenced additional equity and access issues in NYEIP as reported in an August 2021, [Executive Summary by NYSDOH on Early Intervention Program Data: Race and Ethnicity](#) (July 2017–June 2020).

3. A description of how the State will address situations when EIS providers are not available to serve infants and toddlers with disabilities or when there has been a delay or disruption in service provision as required by 34 C.F.R. §§ 303.112 and 303.342(e).

Evidence of Implementation—as soon as possible, but no later than one year from the date of this monitoring report the State must submit to OSEP:

1. Updated data and a description of the State’s improvement activities for addressing its provider shortages reflecting improved availability of early intervention services for infants and toddlers with disabilities and their families in all areas of the State.
2. Actual monitoring reports or updated data demonstrating that the State has implemented its revised policies and procedures and provided monitoring or other oversight of the requirements in 34 C.F.R. §§ 303.13(a), 303.112, 303.322(c), 303.342(e), and 303.207.

MONITORING AND IMPROVEMENT

During OSEP’s monitoring activities, OSEP and NYSDOH used the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocol to examine how NYSDOH implements its general supervisory responsibility, including policies and procedures to identify and correct noncompliance and improve educational results and functional outcomes for all infants and toddlers with disabilities. OSEP reviewed NYEIP policies and procedures, State rules and regulations, monitoring protocols and additional documents submitted by NYSDOH, which are referenced throughout this section.

Components of the State’s Monitoring System

During discussions with OSEP, NYSDOH staff described the components of its general supervision system and provided evidence of the State’s general supervision activities. Under Section 2550 of New York Public Health Law (NYPHL), NYSDOH is responsible for “the general administration and supervision of programs” including the monitoring of agencies, institutions and organizations that provide early intervention services which are under the jurisdiction of a State early intervention service agency” including, “enforcing any obligations imposed on those agencies” consistent with NYPHL and IDEA Part C. (Chapter 45, Article 25, Tittle 2-A § 2550). NYSDOH reported that its general supervision system consists of Statewide monitoring of its 58 EIS programs and its EIS providers, which includes approved individuals and agencies; data review and program evaluation; and the State’s Part C Dispute Resolution system.

Legal Requirements

In order to effectively monitor the implementation of IDEA Part C requirements, the State must have a system that is reasonably designed to ensure that the State can meet its general supervisory responsibility for monitoring the provision of IDEA Part C services as required under 34 C.F.R. §§ 303.120, and 303.700 through 303.702. Under 34 C.F.R § 303.700(b), the primary focus of the State’s monitoring activities must be on:

1. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities;
2. Ensuring that EIS providers meet the IDEA program requirements, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities; and
3. Ensuring that the State has a system that collects and reports valid and reliable data¹⁴.

Under the IDEA, there is a longstanding requirement to correct noncompliance as soon as possible, but no later than one year after the State’s written notification of noncompliance. This is codified in the IDEA regulations in 34 C.F.R. §§ 303.120(a)(iv) and 303.700(e). When verifying the correction of noncompliance, States must ensure that they have internal controls and documentation consistent with other applicable Federal laws – GEPA, EDGAR, and the OMB Uniform Guidance, in addition to the IDEA implementation requirements.

See Appendix I for explanation and listing of legal requirements.

¹⁴ 20 U.S.C. §§ 1435(a)(10)(A) and 1442; 34 C.F.R. §§ 303.120(a) and 303.700; 2 C.F.R. §§ 200.329 and 200.332.

OSEP Analysis

Failure to Identify Noncompliance in a Timely Manner: Data Review and Program Evaluation

The State is not notifying EIS programs of identified noncompliance in a timely manner.

NYSDOH staff described the data review and program evaluation component of the State's general supervision system for identifying and correcting noncompliance. Using its data system, NYEIS,¹⁵ NYSDOH conducts an annual local data review with its 58 EIS programs to determine compliance with IDEA Part C requirements. State staff reported that this review includes verifying the accuracy of information reported in NYEIS, correcting any missing or incorrect data, issuing annual data findings if compliance is below 100 percent for SPP/APR compliance indicators and reviewing subsequent data to ensure correction of noncompliance. Noncompliance identified through the annual data review, specific to IDEA Part C compliance indicators, is subsequently reported in the State's SPP/APR. NYSDOH also uses the data from the annual data review when making local determinations. NYSDOH issues its annual determination letters for all 58 EIS programs after it has received its annual determination from OSEP. Local program determinations are based on Part C SPP/APR compliance and results indicators.¹⁶

During discussions with OSEP, NYSDOH confirmed that they are not issuing formal letters of noncompliance, based on its review of data until more than a year after gathering the initial data and more than six months after receiving any corrected data. Specifically, in spring of each year, State staff noted that data are pulled from NYEIS, and, in July, NYSDOH provides municipalities with spreadsheets of their indicator data to review. NYSDOH staff confirmed that it does not issue findings on the collected data until June of the following year. As an example, for its FFY 2020 SPP/APR, the data were pulled from NYEIS between January 1, 2021, and March 31, 2021. From July 2021 to December 2021, municipalities had an opportunity to clarify their data and submit revised spreadsheets to NYSDOH. NYSDOH then completed a last data pull to finalize the data before they submitted the data to OSEP on February 1, 2022, with their SPP/APR. NYSDOH, however, did not issue findings of noncompliance based on the FFY 2020 data until it issued local program determination letters on June 27, 2022.¹⁷ In response to OSEP's question about this timeline, NYSDOH staff stated they did not consider the data final until after OSEP's SPP/APR clarification period, NYSDOH did not provide additional reasoning explaining the timeline for identifying noncompliance beyond it being based on historical practice but did inform OSEP that its process could be changed if necessary.

To meet its general supervisory responsibility under 34 C.F.R. §§ 303.120(a) and 303.700(e), NYSDOH must provide notification of findings of noncompliance as soon as possible after it identifies noncompliance and must ensure compliance with the IDEA, Part C requirements. When a State is made aware of potential noncompliance with an EIS programs or provider's implementation of IDEA, the State must investigate the issue and reach a conclusion in a reasonable amount of time. If, through its review of evidence, the State determines that the EIS program or provider is out of compliance with an applicable IDEA requirement, the

¹⁵ BEI's Program Evaluation Unit is responsible for overseeing and managing program data for NYEIP within NYSDOH.

¹⁶ Compliance Indicators: Indicator 1 (Timely Provision of Services); Indicator 7 (45-Day Timeline); Indicator 8A (Early Childhood Transition); Indicator 8B (Early Childhood Transition); and Indicator 8C (Early Childhood Transition). Results Indicators: Indicator 2 (Services in Natural Environments); Indicator 3 (Early Childhood Outcomes); Indicator 4 (Family Involvement); Indicator 5 (Child Find: Birth to One); and Indicator 6 (Child Find: Birth to Three).

¹⁷ NYSDOH determination letters include standard language that, "States are required to use the following three categories of determinations: meets requirements, needs assistance, and needs intervention." OSEP reminds the State that although there may not be any EIS programs that have met the criteria for needs substantial intervention, the State must review all four determination categories: meets requirements, needs assistance, needs intervention, and needs substantial intervention, consistent with 34 C.F.R. § 303.700(a)(2).

State must issue a written notification of noncompliance (i.e., a finding) to the relevant EIS program or provider. The finding must be issued in a timely manner, generally within three months of the State substantiating the accuracy of the information and reaching a conclusion, unless the EIS program or provider immediately (i.e., before the State issues the finding) corrects the noncompliance and the State is able to verify the correction.¹⁸

Although NYSDOH can identify noncompliance by reviewing data in the NYEIS as part of its general supervision system, OSEP has determined that NYSDOH is not issuing findings of noncompliance to its EIS programs in a timely manner after discovering noncompliance, which is inconsistent with the timely identification requirements in 34 C.F.R. §§ 303.120(a) and 303.700(e). Specifically, NYSDOH does not provide written notices of findings to its programs until it issues its local determinations in June of each year, up to 18 months after it pulls the data from the NYEIS and more than six months after municipalities have provided any clarifying or corrected data.

Failure to Verify Correction for Non-SPP/APR Requirements: Statewide Monitoring

The State does not have a mechanism in place to verify the correction of findings issued to EIS programs and providers in the State on IDEA Part C requirements beyond the SPP/APR indicators.

NYSDOH contracts with an outside vendor, Keystone Peer Review Organization (KEPRO), to conduct Statewide monitoring of approved EIS programs and providers in the State. When OSEP inquired about NYSDOH's process for verifying correction of noncompliance identified outside of the Part C SPP/APR indicator findings, NYSDOH acknowledged that they do not verify correction for these findings. Under NYSDOH's monitoring contract with KEPRO, KEPRO staff only verify correction of findings related to Part C SPP/APR indicators and health and safety findings consistent with NYPHL. Further, NYSDOH staff stated that they were unsure if the requirements regarding verification of correction of noncompliance applied only to Part C SPP/APR indicators.

Under the monitoring and enforcement provisions of 34 C.F.R. § 303.120, the LA is responsible for identifying and correcting findings of noncompliance for not only the IDEA Part C requirements represented as indicators in the SPP/APR process but, for compliance with all the requirements of IDEA Part C. Just as States may not limit the scope of their general supervisory activities to only the IDEA requirements included in the State's annual SPP/APR submission (i.e., the SPP/APR indicators and data reported to the Department under IDEA Sections 616 and 642), the State may not limit the scope of its responsibility to verify the correction of identified noncompliance to the SPP/APR indicator requirements.¹⁹ While NYSDOH issues findings for noncompliance that is identified outside of the Part C SPP/APR indicators, it does not verify correction of all findings related to IDEA Part C.

To effectively monitor the implementation of IDEA Part C by early intervention service providers, as required by, 34 C.F.R. §§ 303.120(a) and 303.700, the LA must have a general supervision system that corrects noncompliance in a timely manner. NYSDOH staff stated they believed the requirements listed in OSEP's previous guidance on identifying and correcting noncompliance,²⁰ applied only to noncompliance identified

¹⁸ As referenced in OSEP's July 24, 2023, Question and Answer document 23-01, [State General Supervision Responsibilities under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement](#) (OSEP QA 23-01), Question B-2. Note that OSEP also made a similar finding regarding the State's timeline for issuing findings in OSEP's 2008 New York Part C Verification Visit Letter and Enclosure.

¹⁹ See OSEP QA 23-01, Question A-4.

²⁰ OSEP QA 23-01 (issued July 24, 2023) supersedes OSEP's guidance document, Office of Special Education Programs (OSEP) Memorandum 09-02: Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act (Oct. 17, 2008).

through the SPP/APR indicators and therefore, the State does not verify correction of findings of noncompliance not related to the SPP/APR. This practice is inconsistent with OSEP’s longstanding guidance, including OSEP QA 23-01, and the requirements in 34 C.F.R. §§ 303.120(a) and 303.700.

Further, NYSDOH is also not verifying individual child-specific correction of noncompliance identified in State complaint decisions.²¹ OSEP reviewed NYSDOH’s State complaint decisions from July 2019 to September 2022. These complaint decisions included allegations and findings regarding early intervention service provision and corroborated the Part C early intervention service provision concerns expressed by municipalities and other interested parties during interviews with OSEP. Specifically, NYSDOH made findings regarding delays in initiating early intervention services, gaps in service provision, and Part C services not being authorized prior to the IFSP end date. For example, one of the complainants reported that there were “numerous allegations of violations of NYSDOH regulations, occurring across 37 individual child cases, over a six-month period.” When OSEP asked NYSDOH if the 37 children, included in the original complaint received any remedy, NYSDOH reported that they did not address all children in the report because they did not need to in order to determine a violation against the provider and that it would be the responsibility of the county to address child-specific noncompliance. Although NYSDOH determined that the EIS provider was not complying with IDEA Part C requirements, it did not take steps to ensure correction for each of the children potentially impacted by the noncompliance. During OSEP’s visit, OSEP informed NYSDOH that the State LA must have a system in place to verify correction when the LA is aware of child-specific or systemic findings of noncompliance or when there has been a denial in services identified in the IFSP.

Conclusion and Action Required

OSEP’s analysis is based on the documents and information provided by the State and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:

- 2.1 The State does not identify noncompliance in a timely manner using its data system, as required under 34 C.F.R. §§ 303.120 and 303.700 through 303.702.
- 2.2 The State does not verify the correction of all findings of noncompliance related to IDEA Part C (beyond SPP/APR indicators) as required under 34 C.F.R. § 303.120 and its monitoring responsibilities in 34 C.F.R. § 303.700(e).

Required Actions

Policies and Procedures—within 90 days of the date of this monitoring report, the State must submit to OSEP:

1. Updated policies documenting its process for issuing findings of noncompliance using the data system component in a timely manner. 34 C.F.R. §§ 303.120 and 303.700 through 702.
2. Updated policies that document its process of verifying the correction of all identified findings of noncompliance (not just SPP/APR indicators) in accordance with 34 C.F.R. §§ 303.120 and 303.700(e).

Evidence of Implementation – as soon as possible, but no later than one year from the date of this monitoring report, the State must submit to OSEP:

²¹ OSEP has a separate finding below that NYSDOH neither has policies nor monitors its State complaint decisions for systemic issues to ensure that when a State complaint finds violation such as a failure to provide services, the resolution of the State complaint includes appropriate corrective action(s).

1. Evidence of timely identification of noncompliance, including monitoring reports issued in a timely manner based on the State's data system.
2. Other supporting evidence demonstrating the State has required verification of correction of findings of noncompliance with Part C requirements that are not included in the IDEA Part C SPP/APR compliance indicators.

FISCAL MANAGEMENT

During OSEP's monitoring activities, OSEP and NYSDOH staff used the IDEA Part C single line of responsibility fiscal monitoring protocol to examine NYSDOH's role in specific fiscal areas including the general supervision, monitoring, funding, interagency coordination, and other responsibilities in meeting the requirements under Part C of IDEA.

Legal Requirements

Under 34 C.F.R. § 303.225(b), each State LA must have a methodology to track its maintenance of effort or MOE. This includes the ability to calculate the total amount of State and local funds budgeted for expenditures, and actually expended, in a fiscal year for early intervention services for children and their families. The State LA must have this methodology to ensure that "the total amount of State and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under Part C and their families must be at least equal to the total amount of State and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available."

See Appendix I for explanation and listing of additional legal requirements.

OSEP Analysis

As noted earlier, the State is unable to ensure the timely provision of early intervention services and OSEP is concerned that the State's funding structure may contribute to these service provision challenges. New York reported it uses funds from private insurance and public benefits/insurance, local municipality revenue and State general revenue to pay for IDEA Part C services. OSEP's review of New York's fiscal system identified the following three issues, which, in taking actions to address, the State may wish to review its overall funding structure of its IDEA Part C early intervention system.

Funding Sources: MOE Requirements

During interviews with OSEP, NYSDOH staff were unable to describe its MOE methodology and acknowledged that it did not actively track funds budgeted by the municipalities. NYSDOH also questioned its capacity to obtain annual local level budget and expenditure information from its 58 EIS programs. During OSEP's review of publicly available information, it appears that local-level budget information is collected in the State by the New York Office of the State Comptroller.²² Based on the discussions with NYSDOH, OSEP has determined that the State does not have a system to track and calculate the total amount of State and local funds budgeted for expenditures, and actually expended, in a given fiscal for early intervention. Thus, the State is unable to ensure that the level of State and local funding for the provision of early intervention services complies with the IDEA Part C MOE requirements in 34 C.F.R. § 303.225(b).

Funding Sources: Coordination of all Available Resources

NYSDOH uses its Federal IDEA Part C award for administration and not for the provision of early intervention services. NYSDOH does not appear to coordinate all available resources as required under 34 C.F.R. § 303.120(b). Specifically, the State has recently established authority to have private insurers

²² See [Open Book New York](#), Office of the State Comptroller.

directly contribute to the cost of early intervention services through an assessment. Yet its State policies have not been updated to ensure that this new funding source is reflected in its policies particularly around ensuring the timely distribution of funds to EIS programs/municipalities as well as its SOP policy, as well as any MOE calculation, if applicable.

Additionally, under Section 2557 of NYPHL, early intervention services must be provided at no cost to parents and no fees are charged to parents (including co-payments and deductibles). Specifically, early intervention services are first funded through third party payor sources (such as Medicaid) and the remaining costs are shared by the State (49 percent) and municipalities (51 percent). NYSDOH does not use IDEA Part C funds for direct early intervention services and IDEA Part C funds instead are used for administration of NYEIP at the State and county levels.

Under the Covered Lives for Early Intervention legislation (signed into law on December 30, 2021),²³ private insurance companies pay an assessment to the State totaling \$40 million annually. This assessment replaces the funds EIS providers previously received when billing private insurance directly and is intended to streamline the reimbursement process for EIS providers. This assessment represents an increase in funding for early intervention services as the reimbursement rates for private insurance had historically remained low and were previously an inadequate funding source for the program (around \$12 million which is about two percent of the total funding of the program). The funds from the assessment will be disbursed to the municipalities annually to assist in covering the costs of services for families with private insurance.

OSEP commends New York on the passage of this legislation and identifying this resource for its IDEA Part C early intervention system. However, at the time of OSEP's visit in 2022, no funds had yet been disbursed to the municipalities. On September 18, 2023, NYSDOH informed OSEP that approximately \$15 million of the approximately \$20 million in assessment funds designated for early intervention services had been disbursed to municipalities for early intervention services. OSEP appreciates NYSDOH's continued efforts to coordinate and distribute the insurance funds under the 2021 legislation. Given the 51 percent required level of local funding to pay for early intervention services and variations in local abilities, NYSDOH must coordinate all available resources as required under 34 C.F.R. § 303.120(b).

Need to Update the State's SOP Policy

Under Part C, a State may establish a SOP policy to access public benefits/insurance, private insurance, and/or family fees to pay for early intervention services in the State. OSEP last approved New York's SOP policies with the State's FFY 2018 IDEA Part C grant. Those policies indicate that NYSDOH uses public insurance/benefits and private insurance to pay for IDEA Part C services. NYSDOH must update its SOP policy to reflect its recent changes in funding (i.e., that it no longer bills private insurance) and submit that updated SOP policy with its next (FFY 2024) grant application, as required by 34 C.F.R. §§ 303.203(b)(1), 303.510, 303.520, and 303.521.

²³ See the [State of New York Assembly Bill A5339](#) (February 12, 2021).

Conclusion and Action Required

OSEP's analysis is based on the documents and information provided by the State and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:

- 3.1 The State does not have a methodology, including policies and procedures, to track all State and local public funding sources budgeted and expended in a fiscal year for IDEA Part C services to ensure compliance with the IDEA Part C MOE requirements in 34 C.F.R. § 303.225(b).
- 3.2 The State has not consistently ensured that it coordinates all available resources as required under 34 C.F.R. § 303.120(b).
- 3.3 OSEP finds that the State's System of Payments (SOP) policy does not reflect the State's practice as required by 34 C.F.R. §§ 303.203(b)(1), 303.510, 303.520, and 303.521. Specially the State's SOP policy does not reflect the State's practice that it no longer bills private insurance.

Required Actions

1. Within 90 days of the date of this monitoring report, the State must submit to OSEP its revised policies describing the State's methodology to track all State and local public funding sources to enable it to ensure compliance with the IDEA Part C MOE requirements in 34 C.F.R. § 303.225(b).
2. Within 90 days of the date of this monitoring report, the State must submit to OSEP its policy that identifies, and requires coordination of, all available funding resources (including the new assessment funds) as required under 34 C.F.R. § 303.120(b).
3. NYSDOH must submit with its FFY 2024 IDEA Part C grant application either an indication of "no" and a date not later than December 31, 2024, or its updated SOP policy to reflect that it no longer bills private insurance, as required by 34 C.F.R. §§ 303.203(b)(1), 303.510, 303.520, and 303.521.

DISPUTE RESOLUTION

During OSEP's monitoring activities, OSEP used the DMS Dispute Resolution protocols to examine how the State implements its dispute resolution procedures, including State complaints, mediation and due process procedures. The components of NYSDOH's dispute resolution system under IDEA Part C include formal State complaints (referred to by NYSDOH as System complaints), mediation, due process hearings, and an informal TA process. OSEP notes that, in accordance with 34 C.F.R. § 303.430(d)(1), the State has adopted the IDEA Part C due process hearing procedures under 34 C.F.R. §§ 303.435 through 303.438 and 303.421(a).

Legal Requirements

State Complaint Procedures

Under 34 C.F.R. § 303.430, each LA must adopt written State complaint procedures to resolve any State complaints filed by any party regarding any violation of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 through 303.434. Under 34 C.F.R. § 303.432 this includes a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.434. Additionally, under 34 C.F.R. § 303.432, in resolving a complaint in which the LA has found a failure to provide appropriate services, the LA, pursuant to its general supervisory authority under IDEA Part C must address:

- The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's, or toddler's family (such as compensatory services or monetary reimbursement) as required under 34 C.F.R. § 303.432(b)(1); and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families as required under 34 C.F.R. § 303.432(b)(2).

Under 34 C.F.R. § 303.433(a), a State's minimum State complaint procedures under IDEA Part C must include a 60 day timeline for complaint resolution. The regulations specify two allowable reasons for extending the 60 day timeline: (1) if exceptional circumstances exist with respect to a particular complaint; or (2) if the parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the LA, public agency, or EIS provider agree to extend the time to engage in mediation pursuant to 34 C.F.R. § 303.433(b)(1). Under 34 C.F.R. § 303.433(b)(2) the LA must adopt written procedures pursuant to 34 C.F.R. § 303.432(a) to include procedures for effective implementation of the LA's final decision to include TA activities, negotiations, and corrective actions to achieve compliance.

Under 34 C.F.R. § 303.433(c)(1) if a written complaint is received that is also the subject of a due process hearing under 34 C.F.R. § 303.430(d) or contains multiple issues of which one or more are part of the hearing the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

Mediation

Under 34 C.F.R. § 303.430(b) each LA must make mediation available to parties to disputes involving any matter under IDEA Part C the opportunity to resolve disputes through a mediation process at any time and meet the requirements under 34 C.F.R. § 303.431. Under 34 C.F.R. § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to dispute, involving any matter under IDEA Part C, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

Due Process Hearings

Under 34 C.F.R. § 303.430(d) each LA must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter listed under 34 C.F.R. § 303.421(a) which is the identification, evaluation, or placement of the child, or the provision of early intervention services. The State must adopt either the IDEA Part C due process hearing procedures in 34 C.F.R. §§ 303.435 through 303.438 and provide a means of filing the due process complaint; or the IDEA Part B due process hearing procedures in 34 C.F.R. §§ 303.440 through 303.449. As stated above, the State has adopted the IDEA Part C due process hearing procedures.

At a minimum, under 34 C.F.R. § 303.435, a hearing officer must have knowledge about the provisions of IDEA Part C, including early intervention services available for infants and toddlers with disabilities and their families. The hearing officer must be able to listen to the presentation of relevant viewpoints about the due process complaint, examine all information relevant to the issues, seek to reach a timely resolution of the due process complaint and provide a record of the proceedings, including a written decision. Under IDEA Part C, the hearing officer is not an employee of the LA solely because the person is paid by the LA to implement the due process hearing procedures or mediation procedures.

Procedural Safeguards

Under 34 C.F.R. § 303.400 each LA must establish or adopt the procedural safeguards that meet the requirements of IDEA Part C, including among other things, the dispute resolution procedures in 34 C.F.R. § 303.430. The LA must ensure the effective implementation of the safeguards by each participating agency to include the LA and EIS providers in the Statewide system that is involved in the provision of early intervention services (34 C.F.R. § 303.400(a) and (b)).

See Appendix I for explanation and listing of additional legal requirements.

OSEP Analysis

NYSDOH is responsible for the intake and resolution of complaints including tracking complaints and data reporting. NYSDOH shared that State complaints are investigated if they allege a violation of New York Regulations or relevant Public Health Law that has occurred within one year of receipt of the complaint. State complaints require a 60 day timeline for resolution from the date of receipt by NYSDOH.

Due process hearings are the responsibility of NYSDOH through its Bureau of Adjudication (Bureau). The Bureau is responsible for conducting due process hearings, maintaining qualified impartial hearing officers, training, and data reporting. Requests for impartial hearings are made through NYSDOH and must be in writing. Under NYPHL Title 2-A § 2549(3) requests for hearings may be filed at any time except for requests relating to a child not being found eligible for early intervention services. These requests must be made within six months of the determination of ineligibility. Due process hearings must be completed, and a decision rendered within 30 days of receipt of the request for an impartial hearing (10 NYCRR 69-4.17(h)(4)(i)).

State Complaint Procedures

OSEP reviewed State complaint decisions that identified a failure to provide early intervention services to infants and toddlers with disabilities as well as the subsequent CAPs that local programs and providers must develop and submit when noncompliance with one or more requirements of IDEA Part C is found. The monitoring team confirmed through a review of these State-submitted documents, as well as through discussions with program representatives, that NYSDOH's written policies and procedures required under

34 C.F.R. § 303.430(c) do not effectively address the resolution of State complaints filed by a party regarding violations of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 and 303.433.

Out-of-State Parties

Through a review of the NYCRR Procedural Safeguards and discussions with NYSDOH staff, OSEP determined that NYSDOH does not have procedures in place for out-of-State parties to file a complaint, as required by 34 C.F.R. § 303.432(a)(1).

Corrective Actions

A review of State complaint decisions that identified a failure to provide services did not include corrective actions addressing the failure to provide appropriate services to the infant or toddler with a disability that was the subject of the complaint, consistent with 34 C.F.R. § 303.432(b)(1). OSEP noted during document review, and NYSDOH confirmed during interviews, that written State complaint decisions corrective actions are generally limited to changes to policies and procedures. The practice of requiring only policy and procedural changes in corrective actions does not fully meet the LA's responsibilities under 34 C.F.R. § 303.432(b), which requires not only addressing the future provisions of services for all infants and toddlers but corrective actions for any child that is the subject of the complaint. Under 34 C.F.R. § 303.432(b)(1), each LA, in resolving a State complaint where the LA has confirmed that the EIS provider has failed to provide early intervention services, must ensure that appropriate corrective actions are taken to address the needs of the infant or toddler and their family, that was the subject of the complaint, such as compensatory services or monetary reimbursement.

Implementation of State Complaint Decisions

A State's written complaint procedures must also include mechanisms to ensure the effective implementation of the LA's final decision consistent with the requirements of 34 C.F.R. § 303.433(b)(2) beyond acceptance of changes to policies and procedures prescribed in the corrective actions. While the State's CAPs require revised policies and procedures, the State acknowledged that it does not verify subsequent implementation of the revised policies and procedures.

Extension of the 60-Day Timeline

Review of dispute resolution data from reporting years 2018 through 2022 reflect an increasing number of State complaints being resolved with extended timelines beyond that of the 60 d-ay timeline set forth in 34 C.F.R. § 303.433(a). Under 34 C.F.R. § 303.433(b)(1) there are two allowable reasons for extending the 60 -day timeline for resolution of a complaint; (1) if exceptional circumstances exist with respect to a particular complaint or (2) the parent, individual, or organization under State procedures and the public agency involved agree to an extension to engage in mediation or other alternative means of dispute resolution. During discussions, NYSDOH staff acknowledged that NYSDOH has extended State complaints due to circumstances such as mail delivery, staff availability to receive mail, or just extending the complaint arbitrarily without a procedure explaining the State's process. This practice does not align with OSEP's long standing position that staff shortages, heavy caseloads, school vacations and breaks do not constitute an exceptional circumstance for an extension of the 60 -day timeline.²⁴

²⁴ See Question B-31 in OSEP's [Questions and Answers on IDEA Part B Dispute Resolution Procedures](#) (Jul. 23, 2013).

Set Aside of State Complaints

In its review of State complaint tracking logs and discussions with NYSDOH staff, OSEP found that State complaints that were the subject of a due process hearing were not set aside or resolved consistent with 34 C.F.R. § 303.433(c)(1). NYSDOH reported that its practice is to dismiss the complaint and have the complainant resubmit the complaint at the conclusion of the due process hearing. NYSDOH confirmed that there is no process in place to resolve State complaints that are also the subject of a due process hearing. NYSDOH must have written procedures in place to ensure that complaints that were timely filed and set aside under 34 C.F.R. § 303.433(c)(1), are investigated if the due process hearings do not resolve the matters pending in the State complaints. Based on this information, OSEP finds that the State does not have a system in place that is reasonably designed to implement the dispute resolution requirements of IDEA Part C State complaints under 34 C.F.R. §§ 303.432 and 303.433, based on the reasons stated in the above analysis. Specifically, NYSDOH does not have written policies and procedures that address the effective resolution of any State complaints filed by any party regarding any violation of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 and 303.433 (34 C.F.R. § 303.430).

Mediation

NYSDOH indicated that its document entitled, Early Intervention Steps: A Parent's Basic Guide to the Early Intervention Program is provided to parents and guardians as procedural safeguard notice. It includes an explanation of the State's dispute resolution options, as well as model forms for each of the dispute resolution options available. The document includes a model form titled, How to Request Mediation, which states:

After sharing my concerns with my service coordinator and the county [Early Intervention Official] EIO, we are unable to reach agreement regarding the provision of early intervention services. Therefore, I would like to request mediation.”

The model form then asks parents to select from four boxes to choose the area(s) to be mediated. The State's model form includes the following:

We cannot agree on the following (check all that apply):

- Eligibility of my child for the early intervention program. I understand that the request for mediation must be made within six months of the date my child was found ineligible for services.
- Requested early intervention services or evaluations of my child and family.
- County refused to provide early intervention services or evaluations for my child and family.
- Change in early intervention services or evaluations for my child and family.

OSEP finds that the inclusion of these four prompts for parents appears to restrict the scope of mediation. OSEP is concerned that parents would interpret the language on the model form to mean that mediation is only available if one of the four circumstances listed in the form apply. Based on this information, OSEP finds the language in the model form and within NYSDOH's procedural safeguards document to be inconsistent with 34 C.F.R. § 303.430(b), which requires the LA to make mediation available to parties to disputes involving any matter under IDEA Part C to resolve disputes through a mediation process at any time.

Due Process Hearings

OSEP identified two issues with the State's due process policies and/or procedures. First, discussions with NYSDOH identified that no documents described impartial hearing officer qualifications, training requirements, and NYSDOH's oversight responsibility. BEI staff indicated that they were not aware of any agreements in place to ensure impartial hearing officers are qualified or trained in IDEA Part C regulations. BEI staff stated that beyond tracking of decision timelines all other matters relating to due process hearings are the responsibility of the Bureau of Adjudication. OSEP finds that NYSDOH does not ensure hearing officers possess knowledge of IDEA Part C. Hearing officers must possess knowledge of Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families, consistent with 34 C.F.R. § 303.435(a).

Second, NYSDOH staff acknowledged there are not mechanisms in place to track the implementation of due process hearing decisions by municipalities, contracting agencies, or providers. As stated above, NYSDOH places all responsibility for due process hearings with the Bureau of Adjudication. However, NYSDOH is ultimately responsible for ensuring hearing officer decisions are implemented. OSEP finds that NYSDOH does not have a mechanism in place for tracking the implementation of due process hearing decisions by municipalities, contracting agencies, or providers as required under 34 C.F.R. §§ 303.120 and 303.700.

Notification of Dispute Resolution Options

NYSDOH as the State LA is responsible for ensuring implementation of procedural safeguards, as required in 34 C.F.R. § 303.400, including dispute resolution. NYSDOH is responsible for ensuring that EIS providers consistently implement IDEA procedural safeguards, including its dispute resolution provisions. OSEP finds that NYSDOH has allowed multiple municipalities to have procedural safeguards that are inconsistent with the Part C IDEA regulations.

During the monitoring visit, through discussions with NYSDOH, EIS providers, and stakeholders, OSEP was informed of multiple mechanisms that are being used to resolve disputes in the State by local EIS providers that are inconsistent with IDEA dispute resolution requirements. Specifically, these are NYSDOH's TA unit, NYC's Early Intervention Affairs office, and municipalities' use of localized online complaint filing forms.

In NYC, there is a form that is inconsistent with IDEA dispute resolution provisions. NYSDOH provided documents for standard responses from the NYSDOH TA unit which include information for the NYC Consumer Affairs division encouraging parents to contact the NYC Consumer Affairs division to discuss concerns relevant to NYC early intervention. Discussions with stakeholder groups also referenced the use of the NYC Consumer Affairs division as means of addressing parent concerns. The NYC Consumer Affairs division and NYC DOHMH post the document, *Your Family Rights in Early Intervention*, on their public facing website.²⁵ This document has a section titled, "If you have questions or do not agree with a decision," that includes options such as; 1) speak with your service coordinator, 2) call a Regional Office to speak with an assistant director, 3) call Early Intervention Consumer Affairs, and 4) if the problem is not solved, or you still disagree with a decision, you have the right to ask for the decision to be reconsidered. The form then lists dispute resolution options such as, due process rights including mediation, impartial hearings, and System complaints. This form includes informal steps and actions that parties must use prior to pursuing the IDEA Part C dispute resolution rights afforded to them under 34 C.F.R. §§ 303.400 and 303.430.

²⁵ See the New York City Early Intervention program document, [Your Family Rights in Early Intervention](#) (November 2023).

Further, OSEP's review of another municipality's public facing website yielded a fillable electronic form titled, Early Intervention Complaint Form. The municipalities' Early Intervention Complaint Form, includes the following:

[It] is important that all service providers adhere to New York State Early Intervention Regulations and County Department of Health Early Intervention protocols to ensure that services your child is entitled to are being delivered as authorized in your Individualized Family Service Plan; in accordance with federal, state and local laws.

The document continues, "(we) will expedite the investigation if we should need additional information," with no reference to the dispute resolution options available under 34 C.F.R. § 303.430.

OSEP notes that a review of dispute resolution data from 2017 through 2020,²⁶ shows a decline in mediation and impartial hearing requests. OSEP is concerned that NYSDOH's model forms, limited State level written policies, referral of parties to municipalities' informal complaint systems, and municipalities' procedures that do not align with the IDEA and have the potential to unduly create barriers to a party exercising their dispute resolution rights afforded under the procedural safeguards of the Part C IDEA regulations. OSEP finds that NYSDOH has not ensured that its EIS providers have written policies and procedures for notifying parents of IDEA dispute resolution options that are consistent within the State and with IDEA in 34 C.F.R. § 303.430.

Conclusion and Action Required

OSEP's analysis is based on the documents and information provided by the State and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:

State Complaints

- 4.1 The State's written State complaint procedures required under 34 C.F.R. § 303.430(c) do not effectively address the resolution of State complaints filed by a party regarding violations of IDEA Part C that meet the requirements in 34 C.F.R. §§ 303.432 through 303.435.
 - a. The State does not have a policy in place for out-of-State parties to file a complaint consistent with 34 C.F.R. § 303.432(a)(1).
 - b. The State does not monitor its complaint decisions to ensure that: (1) the failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability and family (such as compensatory services or monetary reimbursement) as required in 34 C.F.R. § 303.432(b)(1); and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families as required in 34 C.F.R. § 303.432(b)(2).
 - c. The State does not ensure that, pursuant to 34 C.F.R. § 303.432(a), there is implementation of the LA's final State complaint decision as required in 34 C.F.R. § 303.433(b)(2).
 - d. The State inappropriately extends the 60 day timeline when resolving State complaints for reasons or circumstances that are inconsistent with 34 C.F.R. § 303.433(b)(1), pursuant to 34 C.F.R. § 303.433(b)(1).

²⁶ See the New York Part C Dispute Resolution 618 Data 2017-2020 from the [IDEA Section 618 Data Products, State Level Data Files Part C Dispute Resolution](#).

- e. The State does not have a policy for resolving complaints that are also the subject of a due process hearing under 34 C.F.R. § 303.430(d) or complaints that contain multiple issues of which one or more are part of a due process hearing.

Mediation

- 4.2 The State has a model form that does not clearly allow parties to pursue mediation involving any matter under 34 C.F.R. § 303.431(a).

Due Process

- 4.3 The State does not ensure hearing officers possess knowledge of IDEA Part C. Hearing officers must possess knowledge of Part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families, consistent with 34 C.F.R. § 303.435(a).
- 4.4 The State does not have a mechanism in place for tracking the implementation of due process hearing decisions by municipalities, contracting agencies, or providers as required under 34 C.F.R. §§ 303.149 and 303.700.

Procedural Safeguards

- 4.5 The State has not ensured that its EIS providers have written policies for notifying parents of IDEA dispute resolution options that are consistent within the State and with the IDEA requirements in 34 C.F.R. § 303.430.

Required Actions

Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:

State Complaints

1. The following revised written State complaint policies and monitoring procedures:
 - a. Revised policy to allow complaints to be filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 303.432(a)(1).
 - b. Revised policy and monitoring procedures to require that when the State complaint decision identifies a failure to provide appropriate services, the decision also addresses both: 1) corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the family (such as consideration of compensatory services or monetary reimbursement) as required in 34 C.F.R. § 303.432(b)(1); and (2) appropriate future provision of services for all infants and toddlers with disabilities and their families as required in 34 C.F.R. § 303.432(b)(2).
 - c. Updated monitoring procedures to require monitoring of the implementation of the LA's final state complaint decision as required in pursuant to 34 C.F.R. § 303.433(b)(2).
 - d. Revised state policy that informs State staff who review State complaint requests for extensions that the 60 day timeline may only be extended for the two circumstances identified in 34 C.F.R. § 303.433(b)(1).
 - e. Revised policy that if a written complaint is received is also the subject of a due process hearing under 34 C.F.R. § 303.430(d) or contains multiple issues of which one or more are part of the that hearing, the

State is required to set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing as required in 34 C.F.R. § 303.433(c)(1).

Mediation

2. Revised model form that includes expressly an option for mediation to be available for “any matter” under the Part C IDEA regulations, including matters arising prior to the filing of a due process complaint as required under 34 C.F.R. § 303.431(a).

Due Process

3. Revised due process policies and procedures to:
 - a. Reflect that due process hearing officers will be trained on IDEA Part C requirements consistent with 34 C.F.R. § 303.435(a); and
 - b. Demonstrate how the State will track the implementation of due process hearing decisions as required under 34 C.F.R. §§ 303.149 and 303.700.

Procedural Safeguards

4. A copy of its written memo notifying all EIS providers (with a copy to interested parties and OSEP) requiring them to review and revise, if needed, their dispute resolution policies to ensure that parents are notified of the three dispute resolution options, consistent with the IDEA Part C requirements in 34 C.F.R. § 303.430, and a description of how NYSDOH will ensure consistency with IDEA’s dispute resolution options.

Evidence of Implementation—as soon as possible, but no later than one year from the date of this monitoring report the State must submit to OSEP:

State Complaints

1. Evidence of implementing its State complaint procedures to include:
 - a. Copies of redacted state complaint decisions that include consideration of appropriate corrective actions, consistent with 34 C.F.R. § 303.432(b)(2).
 - b. A description of how the State has implemented final state complaint decisions, consistent with 34 C.F.R. § 303.433(b)(2).
 - c. Monitoring procedures and training materials that include provisions to ensure that State staff who review State complaint requests for extensions are informed that the 60 day timeline may only be extended for the two circumstances identified in 34 C.F.R. § 303.433(b)(1).
 - d. Updated data (provided with the FFY 2023 SPP/APR) for the period July 1, 2023 through June 30, 2024 regarding the number of extension requests received for State complaints and the basis for any extensions granted.

Due Process

2. Evidence of implementing its due process policies and procedures to include evidence of training held for due process hearing officers trained on IDEA Part C requirements consistent with 34 C.F.R. § 303.435(a).

Procedural Safeguards

3. Follow-up on the NYSDOH memo issued to EIS providers, a description of the actions the State has taken (including reviewing revised policies of EIS providers) to ensure that they are consistent within the State and notify parents of the three IDEA Part C dispute resolution procedures.

APPENDIX

Monitoring and Improvement Legal Requirements

In order to effectively monitor the implementation of IDEA Part C, the State must have policies and procedures that are reasonably designed to ensure that the State can meet:

1. Its general supervisory responsibility as required in 34 C.F.R. § 303.120.
2. Its monitoring responsibilities in 34 C.F.R. §§ 303.700 through 303.702, and
3. Its responsibility to annually report on the performance of the State and of each Early Intervention Service (EIS) program, as provided in 34 C.F.R. §§ 303.700(a)(2) and 303.702(b)(2).

A State's monitoring responsibilities include monitoring compliance by its EIS programs and providers (regardless of whether Federal IDEA Part C funds) with the requirements of IDEA Part C, to ensure that the LA can effectively carry out its general supervision responsibility under IDEA Part C, consistent with 34 C.F.R. § 303.120(a)(2).

Under 34 C.F.R. § 303.700(b), the State's monitoring activities must primarily focus on:

1. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and
2. Ensuring that EIS programs and providers meet the program requirements under IDEA Part C, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities. Improving educational results and functional outcomes for all children with disabilities.

In exercising its monitoring responsibilities under 34 C.F.R. § 303.700(d), the State also must ensure that when it identifies noncompliance with IDEA Part C requirements by EIS programs and providers, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance, as required under 34 C.F.R. § 303.700(e).

Further, under 34 C.F.R. § 303.120, the State must have a system that includes a single line of responsibility in a LA designated or established by the Governor that is responsible for the following: (1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under IDEA Part C; and the monitoring of programs and activities used by the State to carry out IDEA Part C (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under IDEA Part C), to ensure that the State complies with IDEA Part C. The State must also have in effect a system that includes monitoring and enforcement requirements in 34 C.F.R. §§ 303.700 through 303.701 and 303.704.

In addition, under 34 C.F.R. § 303.700(a)(1), the State must monitor the implementation of IDEA Part C and under 34 C.F.R. § 303.700(a)(4) must report annually on the performance of the State and each EIS program on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the LA must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 303.700(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 303.700(c). Each State also must use the targets established in the State's performance plan under 34 C.F.R. § 303.701 and the priority areas described in 34 C.F.R. § 303.700(d) to analyze the performance of each EIS program located in the State. 34 C.F.R. § 303.702.

Data Legal Requirements

To meet the data reporting requirements of IDEA sections 616 and 618 (as modified by IDEA section 642) and 34 C.F.R. §§ 303.124, 303.224 and 303.701(c), and 303.720 through 303.724, the State must have a data system that is reasonably designed to collect and report valid and reliable data and information to the Department and the public in a timely manner and ensure that the data collected and reported reflects actual practice and performance.

Fiscal Management Legal Requirements

Under 34 C.F.R. § 303.120(a)(1), each State's system must include a single line of responsibility in a LA, designated or established by the Governor, that is responsible for the general administration and supervision of all EIS providers (regardless of whether they receive Federal IDEA funds), to ensure Statewide compliance with IDEA Part C requirements. As part of this responsibility, LAs must monitor and enforce the fiscal requirements under IDEA Part C, including the payor of last resort requirements in 34 C.F.R. §§ 303.500 and 303.510 and the system of payment policies, such as use of public benefits or insurance or private insurance to pay for Part C services in 34 C.F.R. §§ 303.520 and 303.521. If the State LA identifies noncompliance, it must ensure that the noncompliance is corrected as soon as possible and in no case later than one year after the LA's identification of the noncompliance consistent with 34 C.F.R. § 303.120(a)(2)(iv) and 303.700(e). Further, under 2 C.F.R. § 200.303, the LA must establish effective internal controls that provide reasonable assurance of compliance with "Federal statutes, regulations, and the terms and conditions of the Federal award," and the LA must monitor its compliance with the requirements of the Federal award.

Dispute Resolution Legal Requirements

Under 34 C.F.R. § 303.421(a), the State must ensure that prior written notice is provided to parents a reasonable time before the EIS provider proposes or refuses to initiate or change the identification, evaluation or placement of the infant or toddler or the provision of early intervention services. Under 34 C.F.R. § 303.421(b), this notice must be in sufficient detail to inform parents about the dispute resolution procedures.

The State must have reasonably designed dispute resolution procedures and practices if it is to effectively implement:

1. The State complaint procedures requirements in 34 C.F.R. §§ 303.432 through 303.434;
2. The mediation requirements in 34 C.F.R. § 303.431; and
3. The due process complaint and impartial due process hearing requirements 34 C.F.R. §§ 303.440 through 303.449.

State Complaint Procedures

Under 34 C.F.R. § 303.432, each LA 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. § 303.434. Under 34 C.F.R. § 303.434, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of IDEA Part C or the Part C regulations including the facts on which the statement is based. Under 34 C.F.R. § 303.434(c), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. Under 34 C.F.R. § 303.433(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an onsite investigation, if the LA 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. § 303.431;
4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of IDEA Part C 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 LA’s final decision.

Under 34 C.F.R. § 303.433(b)(1), the State’s procedures must permit an extension of the 60-day time limit only if:

1. Exceptional circumstances exist with respect to a particular complaint, or
2. The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation under 34 C.F.R. § 303.433(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

Mediation

Under 34 C.F.R. § 303.431(a), each LA must ensure that procedures are established and implemented to allow parties to dispute 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. Under 34 C.F.R. § 303.431(b)(1), the State’s procedures must ensure that the mediation process—

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent’s right to a hearing on the parent’s due process complaint, or to deny any other rights afforded under IDEA Part C; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Under 34 C.F.R. § 303.431(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the LA or an EIS provider that is involved in the provision of early intervention services or other services to the child and may not have a personal or professional interest that conflicts with the person’s objectivity.

Due Process Complaint and Hearing Procedures

Under 34 C.F.R. § 303.430(d)(1), the State must provide a means of filing a due process complaint regarding any matter listed in 34 C.F.R. § 303.421(a). Under 34 C.F.R. § 303.437(b) each LA must ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing required under Part C is completed and a written decision mailed to each of the parties. A hearing officer may grant specific

extensions of time beyond the period set out in 34 C.F.R. § 303.437(b) at the request of either party. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court under section 639(a)(1) of IDEA Part C. 34 C.F.R. § 303.438.