

**Table A – Part C (South Dakota)  
Issues Identified in the State Performance Plan**

SPP Indicator	Issue	Required Action
<p><b>Indicator 1:</b> Percent of infants and toddlers with IFSPs who receive the early intervention services on their IFSPs in a timely manner. (20 USC 1416(a)(3)(A) and 1442)</p>	<p>Noncompliance – The State reported an 89% level of compliance for Indicator 1 in the SPP, specifically the requirements at 34 CFR §§303.340(c), 303.342(e) and 303.344(f)(1) (SPP, page 2).</p>	<p>The State must ensure that this noncompliance is corrected within one year of its identification and include data in the APR, due February 1, 2007, that demonstrate compliance with this requirement. The State should review and, if necessary, revise its improvement strategies included in the SPP to ensure they will enable the State to include data in the APR, that demonstrate full compliance with this requirement. Failure to demonstrate compliance at that time may affect OSEP’s determination of the State’s status under Section 616(d) of the IDEA.</p>
<p><b>Indicator 11:</b> Percent of fully adjudicated due process hearing requests that were fully adjudicated within the applicable timeline. (20 U.S.C. 1416(a)(3)(B) and 1442)</p>	<p>Other – The State included a description of its mediation and due process hearing procedures that the State has adopted under 34 CFR §303.420(a) for Part C. OSEP identified two issues that need revision -- the State must: (1) revise the term “developmentally educational benefit” to be “developmental benefit” on p. 44 consistent with Section 632; and (2) delete the term “and” and replace it with “or” on p. 47, last sentence of first paragraph, to make clear that parties that agree to waive dispute resolution are not required to go to mediation (as mediation is voluntary) under Sections 615(e) and 639(a)(8). In addition, if the State has included its full policies regarding mediation in the SPP at pages 42 through 47, it must add the provisions at Sections 639(a)(8) and 615(e) that mediation is confidential.</p>	<p>The State must submit as part of its FFY 2006 Part C grant application, or by June 1, 2006, a written assurance confirming that it has either: (1) revised its due process and mediation procedures prior to June 1, 2006 to (a) revise the term “developmentally educational benefit” to be “developmental benefit” on p. 44 consistent with Section 632; and (b) delete the term “and” and replace it with “or” on p. 47, last sentence of first paragraph to make clear that parties that agree to waive dispute resolution are not required to go to mediation as specified in the issue column consistent with Sections 615 and 639(a)(8), or (2) will revise by June 30, 2007 its due process and mediation procedures to be consistent with Sections 632, 639(a)(8) and 615 of IDEA.</p>

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<b>SPP Indicator</b>	<b>Issue</b>	<b>Required Action</b>
<p><b>Indicator 13:</b>            Percent of mediations held that resulted in mediation agreements.            (20 U.S.C. 1416(a)(3)(B) and 1442)</p>	<p>The State reported that it did not establish a target for this Indicator because the number of due process hearing requests was less than ten. However, because mediation must be available to parents at any time (even if a due process hearing request is filed) under the IDEA 2004 amendments at Sections 615 and 639(a)(8), the relevant data for establishing targets for this Indicator is the number of mediations requested.</p>	<p>If the State is required to establish a target in a future APR because it meets the threshold of ten or more mediation requests, the State must submit the revised target as well as activities to reach that target in that APR. Note that the consensus among mediation practitioners is that 75-85% is a reasonable rate of mediations that result in agreements and is consistent with national mediation success rate data.</p>