



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

DIRECTOR

**March 13, 2024**

By Email

Honorable Lisa Coons  
Superintendent of Public Instruction  
Virginia Department of Education  
P.O. Box 2120  
Richmond, Virginia 23218

Email: [lisa.coons@doe.virginia.gov](mailto:lisa.coons@doe.virginia.gov)

Dear Superintendent Coons:

The purpose of this letter is to provide an update on the status of the findings and corrective actions identified by the U.S. Department of Education's (the Department's) Office of Special Education Programs (OSEP) reported in the Differentiated Monitoring and Support (DMS) monitoring report to the Virginia Department of Education (VDOE) dated June 23, 2020.

This letter addresses VDOE's corrective action submissions to OSEP on September 18, 2020, October 29, 2020, March 4, 2021, December 21, 2021, January 25, 2022, March 11, 2022, June 10, 2022, and August 7, 2023. Some of the information in this response is also based on telephone meetings with the State on January 15, 2022, April 20, 2022, and June 20, 2023. OSEP previously responded to VDOE's corrective action submissions in letters dated [September 1, 2022](#), [February 8, 2022](#), [January 17, 2023](#), and [February 17, 2023](#). As you are aware, OSEP conducted targeted monitoring on related topics the week of September 25, 2023. This letter only addresses the status of findings included in the letter dated June 23, 2020. OSEP will document the results of the September 2023 targeted monitoring activity under separate cover, including any new findings of noncompliance and required actions related to the State's implementation of the Individuals with Disabilities Education Act's (IDEA's) dispute resolution procedures and independent educational evaluation requirements.

The summary of monitoring priorities and outcomes chart, included in this letter, describes the monitoring component, finding, required actions, OSEP analysis, and status of finding(s) based on the evidence received by OSEP to date.

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

We appreciate your efforts to ensure compliance and improve results for children with disabilities. If you have any questions or wish to request technical assistance, please contact your OSEP State Lead.

Sincerely,

*Valerie C. Williams*

Valerie C. Williams

cc: Part B State Director

## SUMMARY OF MONITORING FINDINGS AND STATUS

MONITORING COMPONENT AND FINDING	REQUIRED ACTIONS	OSEP ANALYSIS AND COMMENTS	NEXT STEPS/STATUS
<p><b>General Supervision</b></p> <p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all educational programs for children with disabilities administered within the State, to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA, as required by 20 U.S.C. §§ 1412(a)(11) and 1416(a), 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (b), 20 U.S.C. § 1232d(b)(3)(A) and (E), 34 C.F.R. § 300.600(e) and 2 C.F.R. § 200.332.<sup>1</sup></p>	<p>Within 90 days of the date of this letter, consistent with the State’s general supervisory and monitoring responsibilities described above, the Virginia Department of Education (VDOE) must provide a written plan to OSEP that describes how it will ensure that all of its local educational agencies (LEAs) meet the requirements of Part B of IDEA. The State’s plan must include a description of the steps VDOE will take to ensure that:</p> <ol style="list-style-type: none"> <li>1. The State establishes and will implement general supervision and monitoring procedures and practices that are reasonably designed to ensure that LEAs meet IDEA’s program requirements. The State’s procedures and practices must ensure that the State’s systems for review of LEA compliance data and other information are sufficiently comprehensive to identify noncompliance in a timely manner and ensure timely correction of any identified noncompliance consistent with the requirements in 20 U.S.C. § 1232d(b)(3)(A) and (E) and 34 C.F.R. § 300.600(e) and OSEP Memorandum 09-02 (OSEP Memo 09-02), dated, October 15, 2008.</li> </ol>	<p>OSEP’s analysis is included in the <a href="#">February 17, 2023</a>, letter and accompanying <a href="#">Summary Chart</a>, addressed to the State.</p>	<p><b>CLOSED</b></p>

<sup>1</sup> This citation was modified to reflect changes in the Uniform Guidance ([2 C.F.R. § 200](#)) dated November 12, 2020.

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<p><b>General Supervision</b></p> <p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all educational programs for children with disabilities administered within the State, to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA, as required by 20 U.S.C. §§ 1412(a)(11) and 1416(a), 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (b), 20 U.S.C. § 1232d(b)(3)(A) and (E), 34 C.F.R. § 300.600(e) and 2 C.F.R. § 200.332.</p>	<p>Within 90 days of the date of this letter, consistent with the State’s general supervisory and monitoring responsibilities described above, VDOE must provide a written plan to OSEP that describes how it will ensure that all of its LEAs meet the requirements of Part B of IDEA. The State’s plan must include a description of the steps VDOE will take to ensure that:</p> <ol style="list-style-type: none"> <li>2. The State revises its general supervision and monitoring system to include procedures and practices that are reasonably designed, as appropriate, to consider and address credible allegations of LEA noncompliance in a timely manner.</li> </ol>	<p>OSEP’s analysis is included in the <a href="#">September 1, 2022</a>, letter and accompanying <a href="#">Summary Chart</a>, addressed to the State.</p>	<p><b>CLOSED</b></p>

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<p><b>General Supervision</b></p> <p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all educational programs for children with disabilities administered within the State, to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA, as required by 20 U.S.C. §§ 1412(a)(11) and 1416(a), 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (b), 20 U.S.C. § 1232d(b)(3)(A) and (E), 34 C.F.R. § 300.600(e) and 2 C.F.R. § 200.332.</p>	<p>Within 90 days of the date of this letter, consistent with the State’s general supervisory and monitoring responsibilities described above, VDOE must provide a written plan to OSEP that describes how it will ensure that all of its LEAs meet the requirements of Part B of IDEA. The State’s plan must include a description of the steps VDOE will take to ensure that:</p> <p>3. The State provides a copy of the notification to be issued to all LEAs, parent advocacy groups and other interested parties advising them that the State has revised its policies, procedures, and practices for general supervision and monitoring to be consistent with the required actions described above.</p>	<p>OSEP’s analysis is included in the <a href="#">September 1, 2022</a>, letter and accompanying <a href="#">Summary Chart</a>, to the State.</p>	<p><b>CLOSED</b></p>

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<p><b>Dispute Resolution: State Complaint Procedures</b></p> <p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that the State is not exercising its general supervisory and monitoring responsibilities to implement its State complaint resolution system in a manner consistent with all the requirements in 20 U.S.C. § 1412(a)(11)(A) and 1416(a) and 34 C.F.R. §§ 300.149 and 300.600 and 34 C.F.R. §§ 300.151 through 300.153 for the following reason:</p> <p>The State does not ensure that it resolves every complaint that meets the requirements of 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, specifically in the situation where the State has developed a communication plan with an individual parent-complainant.</p>	<p>Within 90 days of the date of this letter:</p> <p>The State must submit to OSEP documentation demonstrating that the State has established and will implement procedures and practices to ensure that the State resolves every complaint that meets the requirements in 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. § 300.152, even in a circumstance where the State develops a communication plan with an individual complainant.</p>	<p>The State reported to OSEP that it has discontinued its practice of developing “communication plans” with individual complainants.</p> <p>OSEP conducted additional monitoring of the State’s complaint resolution procedures in September 2023, and the findings, including any required actions, are set out in OSEP’s 2024 DMS monitoring report.</p>	<p><b>CLOSED</b></p>
<p><b>Due Process Complaint and Hearing Procedures</b></p>	<p>Within 90 days of the date of this letter, the State must:</p>	<p>OSEP’s analysis is included in the <a href="#">February 17, 2023</a>, letter and</p>	<p><b>CLOSED</b></p>

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<p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that:</p> <ol style="list-style-type: none"> <li>1. The State is not exercising its general supervisory and monitoring responsibilities in accordance with 20 U.S.C. §§ 1412(a)(11)(A) and 1416(a) and 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2) with regard to the following:               <ol style="list-style-type: none"> <li>a. VDOE does not ensure and document that LEAs track the implementation of the timelines for the resolution process for due process complaints filed by parents in 34 C.F.R. § 300.510 and for calculating the beginning and expiration of the 45-day due process hearing decision timeline in 34 C.F.R. § 300.515(a), unless under 34 C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Submit documentation that the State has revised its dispute resolution procedures and practices and is implementing those revisions, to ensure that:               <ol style="list-style-type: none"> <li>a. The State has a mechanism for tracking the timelines for the resolution process required under 34 C.F.R. § 300.510 to determine when: resolution meetings occur; the 30-day resolution period or the adjusted resolution period has concluded; and the 45-day hearing timeline commences.</li> <li>b. The State has a mechanism for tracking the timelines for resolution meetings and the resolution period for expedited due process complaints in 34 C.F.R. § 300.532(c)(3) and for determining whether expedited due process hearings and determinations in those hearings occur within the timelines required in 34 C.F.R. § 300.532(c)(2).</li> <li>c. Hearing officers are receiving appropriate training allowing them to apply and track the resolution period timelines for all due process hearings.</li> </ol> </li> <li>3. Submit a copy of the notification to be issued to all hearing officers, LEAs, parent advocacy groups, and other interested parties advising them that the State has revised and is implementing procedures for tracking the timeliness of the resolution process and fully adjudicated due process hearing decisions to</li> </ol>	<p>accompanying <a href="#">Summary Chart</a>, addressed to the State.</p>	

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<p>request of a party to the hearing.</p> <p>b. VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(c)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(c)(2) in order to properly track due process hearing decision timelines.</p> <p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that:</p> <p>2. The State does not have procedures and practices that are reasonably designed to ensure a timely resolution process for due process complaints filed by parents or the timely adjudication of due process complaints that result in due process hearings, or a timely resolution process for expedited due process complaints, and the timely</p>	<p>be consistent with the required actions described above.</p>		



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<p>adjudication of expedited due process hearings.</p>			
<p><b>Due Process Complaint and Hearing Procedures</b></p> <p>Based on the review of documents, analysis of data, and interviews with State personnel, OSEP concludes that:</p> <p>3. Because the State does not have a mechanism to reliably determine the date on which the 45-day due process hearing timeline in 34 C.F.R. § 300.515(a) commences, the State is unable to report valid and reliable data on the adjudication of due process complaints as required under Section 618(a)(1)(F) of IDEA.</p> <p>4. Because the State does not have a mechanism for reliably determining whether expedited hearing timelines are met, the State is unable to report valid and reliable data on expedited due process hearings in accordance with Section 618(a) of IDEA.</p>	<p>Within 90 days of the date of this letter, the State must:</p> <p>2. Submit documentation demonstrating that the State has reviewed its due process hearing data collection processes and revised them, as necessary, to ensure that, consistent with the information set forth above, it will be able to provide accurate data on fully adjudicated hearings and hearing decisions with allowable extensions for IDEA Section 618 dispute resolution data submission for due process hearings conducted pursuant to 34 C.F.R. §§ 300.511–300.515 and for expedited due process hearings conducted pursuant to 34 C.F.R. § 300.532 for the school year 2020–2021 data collection. The reporting year for this data collection is July 1, 2020 through June 30, 2021.</p>	<p>The State submitted documentation on August 7, 2023, which demonstrates that the State conducted the required review, and revised its data collection processes to ensure that it will be able to provide accurate data on due process hearings.</p>	<p><b>CLOSED</b></p>

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<p><b>Mediation</b></p> <p>Based on the review of documents and interviews with State personnel, OSEP concludes that the State does not have procedures and practices that are reasonably designed to implement a mediation process that is consistent with the requirements of 20 U.S.C. § 1415(e) and 34 C.F.R. § 300.506. Specifically, the State’s practice of having its mediation coordinator co-mediate when the mediator is new, and permitting its mediation coordinator to be present at the mediation sessions is inconsistent with the requirement in 34 C.F.R. § 300.506(c)(1) that the State’s procedures ensure that a mediator is not an employee of the State educational agency (SEA) and has no personal or professional interest that would conflict with the mediator’s objectivity.</p>	<p>Within 90 days of the date of this letter, the State must provide:</p> <ol style="list-style-type: none"> <li>1. Documentation demonstrating that the State has established revised procedures and practices, and is implementing those revisions, to ensure that the State’s mediation coordinator, an employee of the SEA, does not co-mediate and is not present during mediation sessions.</li> <li>2. A copy of the notification to be issued to all LEAs, parent advocacy groups, and other interested parties advising them that the State has implemented revised procedures and practices that prohibit the attendance of any employee of VDOE at a mediation session.</li> </ol>	<p>OSEP’s analysis is included in the <a href="#">September 1, 2022</a>, letter and accompanying <a href="#">Summary Chart</a>, addressed to the State.</p>	<p><b>CLOSED</b></p>
<p><b>Independent Educational Evaluations (IEE)</b></p> <p>Based on a review of documents and interviews with State</p>	<p>Within 90 days of the date of this letter, the State must:</p> <ol style="list-style-type: none"> <li>1. Submit a written assurance to OSEP specifying that as soon as possible but in no</li> </ol>	<p>OSEP’s analysis is included in the <a href="#">February 17, 2023</a>, letter and accompanying <a href="#">Summary Chart</a>, addressed to the State.</p>	<p><b>CLOSED</b></p>

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<p>personnel, OSEP concludes that the provision of Virginia’s regulation, 8VAC20-81-170(B)(2)(a) and (e), are inconsistent with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, because the State’s regulation restricts a parent’s right to an IEE at public expense to only those areas in which the public agency had previously evaluated the child.</p>	<p>case later than one year from the date of this report, in accordance with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, the State will revise Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e) to, at a minimum, remove the word “component” following the word “evaluation.”</p> <p>2. Submit to OSEP a copy of a memorandum that the State has issued to all LEAs, parent advocacy groups, and other interested parties instructing LEAs to comply with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502(b) by also providing an IEE at public expense in areas where the LEA previously has not conducted its own evaluation, unless the LEA has demonstrated, through a due process hearing decision, that its evaluation is appropriate; and advising that the State will be revising Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e), to, at a minimum, remove the word “component” following the word “evaluation” in accordance with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502(b).</p> <p>3. Upon completion of the changes to the Administrative Code, submit to OSEP documentation of the revisions.</p>		
<p><b>Independent Educational Evaluations (IEE)</b> Based on a review of documents</p>	<p>4. Review and revise its policies, procedures, and practices regarding the IEE process, and require its LEAs to conduct a similar review of their policies, procedures, and practices, to</p>	<p>The State provided a copy of its email of October 10, 2023, that included a link to the survey it sent</p>	<p><b>CLOSED</b></p>

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<p>and interviews with State personnel, OSEP concludes that the provision of Virginia’s regulation, 8VAC20-81-170(B)(2)(a) and (e), are inconsistent with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, because the State’s regulation restricts a parent’s right to an IEE at public expense to only those areas in which the public agency had previously evaluated the child.</p>	<p>ensure that pending revision of Virginia Administrative Code 8VAC20-81-170(B)(2)(a) and (e):</p> <ul style="list-style-type: none"> <li>a. VDOE and its LEAs do not limit a parent’s right to obtain an IEE at public expense to the areas of assessment or evaluation components that were previously conducted by the public agency; and</li> <li>b. In a circumstance where a parent requests an IEE at public expense of their child in an area not previously assessed by the public agency, the public agency, without unnecessary delay, either: <ul style="list-style-type: none"> <li>i. Initiates a hearing under 34 C.F.R. § 300.507 to show that its evaluation is appropriate; or</li> <li>ii. The public agency must ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing under 34 C.F.R. § 300.507 that the evaluation obtained by the parent did not meet agency criteria.</li> </ul> </li> </ul>	<p>to its LEA Superintendents requiring each LEA to:</p> <ul style="list-style-type: none"> <li>1) review its policies, procedures, and practices related to IEEs for consistency with the State’s revised Administrative Code; and</li> <li>2) provide a certification to VDOE by October 31, 2023, to document that the LEA’s review had been completed.</li> </ul> <p>In its email correspondence to OSEP on November 9, 2023, the State reported it is conducting follow up monitoring activities with 14 of its LEAs based on the information contained in, or missing from, their certification submissions, along with concerns raised by the LEAs’ constituents.</p> <p>In September 2023, OSEP conducted monitoring of the State’s oversight of IEE implementation by LEAs, and the relevant findings, including any required actions, are set out in OSEP’s 2024 DMS monitoring report.</p>	