DMS REPORT

DIFFERENTIATED MONITORING AND SUPPORT

OFFICE OF SPECIAL EDUCATION PROGRAMS

U.S. DEPARTMENT OF EDUCATION

STATE	**ALASKA**
DATE	SEPTEMBER 25, 2023
IDEA	PART B

CONTENTS

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

DIRECTOR

September 25, 2023

By Email

Honorable Deena M. Bishop, Ed.D.
Commissioner of Education
Alaska Department of Education and Early Development
801 West 10th Street, #200
P.O. Box 110500
Juneau, Alaska 99811

Email: deed.commissioner@alaska.gov

Dear Commissioner Bishop:

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 encompasses States' responsibilities 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 process[1] 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: Subrecipient Monitoring
- Dispute Resolution
- Early Childhood Transition
- Child Find
- Significant Disproportionality

This DMS monitoring report summarizes OSEP's review of IDEA Part B requirements regarding these monitoring priorities and components. OSEP conducted virtual interviews with representatives from the State's Educational Agency (SEA) Alaska Department of Education and Early Development (DEED or State) during

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

December 2020, January 2021, and February 2022 through May 2022 and an on-site visit on June 4-10, 2022. The interviews included staff from DEED's special education office, the Division of Education Support Services. In addition to staff interviews, OSEP reviewed publicly available information, policies and procedures and other related documents DEED submitted to OSEP and as part of the early childhood transition component, OSEP had discussions with the Alaska Department of Health (DOH), the lead agency (LA) designated by the Governor that is responsible for administering Alaska's IDEA Part C program, Alaska's Infant Learning Program (ILP). Finally, OSEP solicited feedback from various groups of stakeholders and local level staff in order to gather a broad range of perspectives on the State's system of general supervision.

Based on its review of available documents, information, and interviews conducted, OSEP has identified 11 findings of noncompliance with IDEA requirements at the conclusion of our monitoring activities. OSEP is making the following findings, listed below, and described in more detail in the monitoring report, including any required actions.

While OSEP has not identified a finding specifically related to the requirements that are part of the data component, concerns with the State's transition data are included in the early childhood transition section of this monitoring report. OSEP's review of monitoring priorities and components of general supervision did not include the implementation of the IDEA requirements by all local educational agencies (LEAs) 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

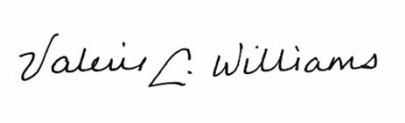
MONITORING COMPONENT	FINDINGS SUMMARY
1. Monitoring and Improvement	1.1 OSEP finds that the State does not have a general supervision system that is reasonably designed to ensure the State's examination of data collected through its data system to determine LEA compliance is being used for the purposes of identifying noncompliance and verifying correction. 34 C.F.R. §§ 300.600(e). The State does not issue findings of noncompliance within a reasonable period of time after the noncompliance is identified through a review of its supplemental data collection as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.
2. Early Childhood Transition	2.1 OSEP finds that the State does not have a reasonably designed general supervision system which ensures children with disabilities participating in early intervention programs under IDEA Part C and who will participate in preschool programs under IDEA Part B

MONITORING COMPONENT	FINDINGS SUMMARY
	experience a smooth and effective transition to those preschool programs in a manner consistent with IDEA Section 637(a)(9), as required by IDEA Sections 612(a)(9) and (11) and 616(a), and 34 C.F.R. §§ 300.124, 300.149, and 300.600 through 300.602, and 20 U.S.C. 1232d(b)(3)(A) and (E). 2.2 OSEP finds that the State does not have policies and procedures in place which ensure that all parents of potentially eligible children with disabilities receive notice of their procedural safeguards as required under 34 C.F.R. § 300.504(a)(1).
3. Fiscal Management: Subrecipient Monitoring	3.1 OSEP finds that the State does not have a reasonably designed system, policies and procedures, and internal controls for its subrecipient monitoring process consistent with 2 C.F.R. §§ 200.332(b), (d)-(f) and (h), 200.339, and 34 C.F.R. §§ 300.149 and 300.600. 3.2 OSEP finds that the State is unable to ensure that every subaward is clearly identified to the subrecipient and includes the required information consistent with 2 C.F.R § 200.332(a). Specifically, OSEP's review found that DEED's Grant Award Notice (GAN) does not include the subaward Period of Performance Start and End Date as required under 2 C.F.R. § 200.332(a)(1)(v).
4. Dispute Resolution	4.1 OSEP finds that the State does not have a system in place to ensure that mediation agreements that result in Individualized education program (IEP) facilitation are formalized in written mediation agreements as required by 34 C.F.R. § 300.506(b)(6). 4.2 OSEP finds that the State's model form and instructions do not meet the content

MONITORING COMPONENT	FINDINGS SUMMARY
	requirements under 34 C.F.R. § 300.508(b) for filing a due process complaint. Specifically, the State's model form entitled, "Notice of Request for Due Process Hearing" requires "Student Address/Phone," and the form does not make clear that inclusion of a phone number is either optional or only required as available contact information in the case of a child or youth experiencing homelessness or a student who has reached the age of majority. 4.3 OSEP finds that the State does not have procedures to ensure that LEAs are convening a resolution meeting within 15 days of receiving notice of the parent's due process complaint, as required under 34 C.F.R. § 300.510(a) and does not have a mechanism to track the 30-day resolution period requirements under 34 C.F.R. § 300.510(b). 4.4 OSEP finds that the State does not have mechanisms in place to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable time set by the State as required under IDEA, 34 C.F.R §§ 300.149, 300.511 through 300.514, and 300.600. 4.5 OSEP finds that the State's policies and procedures related to State complaints do not address the award of a remedy for the denial of appropriate services, as required under 34 C.F.R. § 300.151(b).
5. State Advisory Panel	5.1 OSEP finds the State does not have a State advisory panel (SAP) as required by IDEA Sec. 612(a)(21) and 34 C.F.R. §§ 300.167 through 300.169.

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

Sincerely,



Valerie C. Williams
Director
Office of Special Education Programs

cc: Donald Enoch
Part B State Director

Enclosure:
DMS Monitoring Report
Appendix

MONITORING AND IMPROVEMENT

During OSEP's monitoring activities, OSEP and DEED staff used the DMS Integrated Monitoring and Sustaining Compliance and Improvement protocols to examine how DEED implements its general supervisory responsibility, including how dispute resolution is used to identify and correct noncompliance.

Legal Requirements

In order to effectively monitor implementation of Part B of the IDEA, as required by 34 C.F.R. §§ 300.149 and 300.600 through 300.602, the State must monitor the improvement of educational results and functional outcomes for all children with disabilities, and must ensure compliance with the IDEA, Part B requirements.

The Part B regulations in 34 C.F.R. § 300.600(e) require that, in exercising its monitoring responsibilities under 34 C.F.R. §§ 300.149 and 300.600(d), the State must ensure that when it identifies noncompliance with the requirements of Part B by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. As explained in OSEP's Question and Answer document 23-01, State General Supervision Responsibilities under Parts B and C of the IDEA: Monitoring, Technical Assistance, and Enforcement (Jul. 24, 2023) (OSEP QA 23-01) and previously noted in OSEP's monitoring, in order to demonstrate that previously identified noncompliance has been corrected, a State must verify that each LEA with noncompliance is: (1) correctly implementing the specific regulatory requirements (i.e., achieved 100 percent compliance with the relevant IDEA requirements) based on a review of updated data and information, such as data and information subsequently collected through integrated monitoring activities or the State's data system (systemic compliance); and (2) if applicable, has corrected each individual case of child-specific noncompliance, unless the child is no longer within the jurisdiction of the LEA, and no outstanding corrective action exists under a State complaint or due process hearing decision for the child (child-specific compliance). (See OSEP QA 23-01, Question B-10).

If a State examines data through its database and determines that the data shows noncompliance with the requirements of the IDEA, the State must make a finding and notify the LEA in writing of the noncompliance, and of the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification (i.e., the date on which the State provided written notification to the LEA of the noncompliance).

The State's general supervision system should be reasonably designed to ensure the State examines data collected through its data system at regular intervals to determine LEA compliance with IDEA requirements (e.g., monthly, quarterly, or annually). This includes reviewing data collected to meet the IDEA reporting requirements under the SPP/APR and IDEA Section 616. States should inform LEAs of when and how the data system is being used for the purposes of determining compliance and identifying noncompliance. (See OSEP QA 23-01, Question A-5).

See Appendix I for a listing of additional legal requirements.

OSEP Analysis

During discussions with OSEP, DEED stated that it fulfills its general supervision responsibilities through on-site monitoring, data system analysis, including SPP/APR indicators and its annual supplemental data collection, analysis and review of IDEA requirements beyond the compliance indicators, dispute resolution mechanisms, annual determinations, and fiscal oversight (described in later sections), and includes a system of identifying and verifying the correction of noncompliance through pre-finding correction, corrective actions and

enforcement actions. In addition, DEED explained its monitoring is conducted over a four-year cycle across its LEAs and occurs each Fall, generally within the first three months of the school year. In addition to the LEAs identified within the four-year monitoring cycle, Anchorage, Fairbanks, and Matsu are visited annually, and the Kenai LEA is visited every other year because of the size of their fiscal allocations. The State's on-site monitoring activities are conducted over two-to-three days and include a review of randomly selected student files using the State's Monitoring Standard tool. The Monitoring Standard tool is an Excel spreadsheet, which is used as a checklist when conducting student file reviews and includes a list of various IDEA requirements.

In addition to its cyclical monitoring, the State reported that it may conduct a special monitoring activity or schedule a technical assistance (TA) visit to one or more LEAs, when warranted. These on-site visits usually occur when an LEA receives a determination of Needs Intervention, has findings of noncompliance resulting from a State complaint decision, or has a high level of risk as determined by the State's risk assessment. OSEP could not determine whether the State identifies noncompliance or issues findings during this process.

OSEP noted the following deficiencies in the State's practices:

Identification and Correction of Noncompliance

The State does not have policies and procedures to ensure LEA compliance with IDEA requirements when the State examines, or reviews, data collected through its data system. OSEP reviewed State submitted documents and DEED confirmed in interviews how its supplemental data collection is used to identify noncompliance. Each year, LEAs are required to submit data for the State's IDEA Part B SPP/APR, Indicators B-7 (Pre-school Outcomes), B-11 (Timely Initial Evaluations), B-12 (Early Childhood Transition), and B-13 (Secondary Transition) through the State's Supplemental Workbook. LEAs must submit the Supplemental Workbook to the SEA on July 15 of each year and include data for the full Federal fiscal year (FFY) reporting period (July 1 through June 30). In addition to SPP/APR indicator data, LEAs include in the State's Supplemental Workbook private school child find data, specifically the number of students evaluated, eligible for services, and receiving services. After LEAs submit the annual supplemental data, the State conducts a quality control review by comparing each LEA's submitted data to the LEA's previous year's data. In circumstances where there are data anomalies or inconsistencies, the State will follow up with the LEA to resolve any anomalies before the data are considered final.

When noncompliance is identified (i.e., data less than 100 percent) through the collection of data used to report on IDEA Part B SPP/APR compliance Indicators B-11, B-12, and B-13, the LEA is made aware that their data is less than 100 percent and is provided technical assistance (TA). The State reported that although written findings of noncompliance are not issued as part of this process, in most cases, it can verify correction of noncompliance through reviewing the data in the State's Supplemental Workbook that is reviewed subsequent to when the noncompliance occurred or through cyclical monitoring. However, DEED was unable to demonstrate the timely correction for all identified noncompliance based on OSEP's review of the State's Supplemental Workbook and staff interviews. For example, the State could not account for LEAs with noncompliant data in the State's Supplemental Workbook that were not currently identified for programmatic monitoring.

The State's practice of providing TA, rather than issuing written findings of noncompliance, when it has identified noncompliance in its data system is inconsistent IDEA Part B requirements. See 34 C.F.R. § 300.600 and OSEP QA 23-01, Question A-5. Additionally, because the State is not issuing written findings of noncompliance, OSEP is concerned about the accuracy of the data provided in the SPP/APR regarding the number of findings identified and timely corrected.

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 stakeholders. Based on this analysis, OSEP finds that:

1.1 DEED does not have a general supervision system that is reasonably designed to ensure the State's examination of data collected through its data system to determine LEA compliance is being used for the purposes of identifying noncompliance and verifying correction. 34 C.F.R. §§ 300.600(e). The State does not issue findings of noncompliance within a reasonable period of time after the noncompliance is identified through a review of its supplemental data collection as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.

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 the State's process for reviewing the information in its data system to determine compliance. In addition, the State must submit monitoring policies which reflect when the State will examine data collected from its data system to determine LEA compliance with IDEA requirements (e.g., monthly, quarterly, or annually).

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. Evidence of timely identification and verification of correction of noncompliance consistent with the State's updated policies and procedures for identifying noncompliance in a timely manner using its data system, including examples from the State's Supplemental Workbook where an LEA's data demonstrated noncompliance and evidence of how the State responded (i.e., a letter or report of noncompliance, evidence of correction such as a CAP, individual child-level correction, or other mechanisms the State uses to verify correction).

EARLY CHILDHOOD TRANSITION

During OSEP's monitoring activities, OSEP conducted interviews with State personnel, including staff from DEED and DOH regarding transition from early intervention programs under IDEA Part C to IDEA Part B Section 619 preschool programs (Section 619). In addition, OSEP's interviews also included a discussion of the State's implementation of the child find requirements under Part B and Part C of IDEA. DEED and DOH both identified the referral process, from IDEA Part C to IDEA Section 619, as a barrier to implementing the child find requirements.

Legal Requirements

Under 34 C.F.R. § 300.124, the State must have in effect policies and procedures to ensure that:

(a) Children participating in early intervention programs assisted under IDEA Part C, and who will participate in preschool programs assisted under IDEA Part B, experience a smooth and effective transition to preschool programs consistent with 34 C.F.R. §§ 303.209(d)(1)(i) and 303.209(d)(1)(ii);

(b) By the child's third birthday, an IEP or, if consistent with 34 C.F.R. § 300.323(b), an IFSP, has been developed and is being implemented for the child consistent with 34 C.F.R. § 300.101(b); and

(c) Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under 34 C.F.R. § 303.120.

Under 34 C.F.R. § 300.124, the SEA must have in effect policies and procedures to ensure children participating in IDEA Part C early intervention, and who are potentially eligible for preschool programs under Section 619, experience a smooth and effective transition to those programs. The Part C State lead agency's transition notification to the SEA and appropriate LEA must be treated as a referral under Part B.

Upon receipt of the referral from Part C, the LEA must provide the child's parent with a copy of the procedural safeguards notice as required under 34 C.F.R. § 300.504. Further, the LEA must take one of two actions. If the LEA suspects the child has a disability under IDEA Part B, the LEA must request the parent's consent to conduct an initial evaluation to determine the child's eligibility for services under Part B (34 C.F.R. § 300.300) and, if the parent provides consent, conduct the evaluation. If the LEA does not suspect that the child has a disability under IDEA Part B, the LEA must provide the parent written notice consistent with 34 C.F.R. § 300.503 which explains, among other things, the basis for its decision and a statement that the parents have protections under the IDEA Part B procedural safeguards. These safeguards include the parent's right to request a due process hearing or file a State complaint if the parent believes the LEA should evaluate the child.

Under 34 C.F.R. § 300.149(d), SEAs are responsible for the general supervision of all educational programs for children with disabilities administered within the State, including each educational program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior), and including Section 619 special education preschool programs. Additionally, as required under 34 C.F.R. § 300.601(b), States must collect valid and reliable data, which includes data on preschool-aged children with disabilities under Section 619, for the purpose of meeting

Federal IDEA reporting requirements, including those under IDEA Section 618[2] and under IDEA Sections 616 and 642, such as the SPP/APR.

OSEP Analysis

The State, as required under IDEA, has an interagency agreement in the form of a Memorandum of Agreement (MOA) in place between the IDEA Part B Section 619 program within DEED and the IDEA Part C program, within DOH. During OSEP's DMS monitoring activities, DEED and DOH informed OSEP that the State was in the process of updating the 2016 MOA to strengthen coordination and clarify roles and responsibilities between the two agencies. On July 1, 2023, OSEP reviewed and approved the revised MOA through the Alaska IDEA Part C grant letter, under Section II.A.10.

OSEP noted the following deficiencies in the State's practices:

The SEA does not have policies and procedures to ensure that children participating in IDEA Part C early intervention who are potentially eligible for preschool programs under IDEA Part B, experience a smooth and effective transition. DEED staff confirmed that when DOH provides the requisite transition notification under 34 C.F.R. 303.209(b), DEED is not treating this as a referral and ensuring that the procedural safeguards notification is provided to parents as part of the child find referral process. OSEP learned from stakeholders and DEED staff that one challenge is ensuring that LEAs implement child find as a year-round process rather than a one-time activity at the beginning of each school year.

While DEED staff informed OSEP that its early childhood transition procedures are documented in the State's Special Education Handbook, OSEP notes that the requirement for LEAs to provide the procedural safeguards notice to parents is not clear from either State or local policies. Specifically, the only reference to early childhood transition in Alaska's Special Education Handbook states:

> School districts will receive notification of all children served under Part C prior to turning three [3] years of age unless the parents "opt out" of this referral process. This notification constitutes a referral for special education services. A transition meeting should be scheduled. Any evaluations that may be needed to determine if the child is eligible for Part B services should be discussed at that time.

Additionally, although the revised transition MOA between DEED and DOH addresses the requirement to provide a copy of the procedural safeguards notice to parents of potentially eligible children with disabilities upon referral from Part C, DEED's Special Education Handbook does not include this same requirement for its LEAs.[3] Under 34 C.F.R. § 300.504(a)(1), a copy of the procedural safeguards must be given to the parents upon initial referral for evaluation. Because DEED does not act on all notifications from the Part C LA, it is unclear to OSEP if all parents of potentially eligible children with disabilities receive their procedural safeguards as required. In addition, DEED could not verify that personnel from its LEAs attend the transition conference

[2] Section 618 of IDEA requires that each State submit data about the infants and toddlers, birth through age 2, who receive early intervention services under Part C of IDEA and children with disabilities, ages 3 through 21, who receive special education and related services under Part B of IDEA.

[3] Based on Alaska's IDEA Part C eligibility definition, OSEP would reasonably expect that most children who have been served under IDEA Part C are highly likely to be eligible for IDEA Part B Section 619 preschool services. Eligibility for Part C is determined through an evaluation/assessment conducted by the local ILP. Children, from birth to 36 months, who meet one of the following criteria are eligible: (1) Developmental delay of 50 percent or greater in one or more areas of development; (2) Disabling condition with a high probability of resulting in a 50 percent or greater developmental delay; (3) Child's development appears atypical, and a multi-disciplinary team determines that the child is likely to have a severe developmental delay.

arranged by the LA, as required by 34 C.F.R. § 300.124(c), which can also impact whether parents receive the required procedural safeguards.

Monitoring and Oversight of Local Policies and Procedures

According to DEED staff, in addition to the Special Education Handbook, LEAs have their own policies and procedures in place, as well as Memoranda of Understanding (MOU) with local ILPs that provide direct early intervention services. Each district is responsible for staff training and professional development related to early childhood transition requirements. DEED provides districts with an optional MOU template and provides TA when requested, however DEED does not routinely review local MOUs, policies and procedures, or training materials as part of its oversight and general supervision of Part B Section 619. Regardless of who the State contracts with or who the LEAs have an MOU with to implement the early childhood transition requirements, the SEA is responsible for monitoring, oversight and ensuring the implementation of IDEA.

DEED reported that the early childhood transition requirements are monitored using the State's Monitoring Standard tool. This tool is used to review student files and determine if an IEP was developed and implemented by the child's third birthday, as required by 34 C.F.R. § 300.124(b). State staff confirmed, however, that the monitoring tool does not include any element to review whether LEAs participate in transition planning conferences. Further, DEED was unable to provide any documentation such as monitoring reports, letters of finding, or corrective actions, to demonstrate that oversight is occurring for this requirement. DEED indicated that even though it does not have a specific mechanism to track this information, the State believes that, generally, LEAs are attending transition conferences when invited. State staff acknowledged that there are circumstances where the LEA has not been invited to the transition conference, and is, therefore, unaware that a transition conference is scheduled. Staff also acknowledged that the transition MOA in place at the time of OSEP's monitoring activities was not being implemented as written.

Collecting and Reporting Valid and Reliable Data

As it relates to implementation of local procedure and practices, DEED acknowledged that it is aware of some issues specifically related to the LEA notification and referral process and discussed how these issues impact the State's ability to collect and report valid and reliable data. Because DEED had concerns about the accuracy of the Part C referral data, DEED chose to use LEA level data for notification of potentially eligible children with disabilities rather than data provided by DOH. DEED attributes the differences between the number of children referred by the Part C program prior to age three and the data DEED receives from LEAs to confusion about when a notification constitutes a referral. State staff also reported that, even though they believe the LEA data are more accurate than the data DEED receives from DOH, the LEA data cannot always be verified due to lack of source documents (i.e., a copy of the LEA notification).

A key part of a State's monitoring and general supervisory responsibilities under IDEA is the collection and submission of valid and reliable data, as required under 34 C.F.R. § 300.601(b). DEED, as the SEA, is responsible for the monitoring and general supervision of its Section 619 programs and must have a system in place to ensure those programs are complying with IDEA Part B requirements, including the submission of valid and reliable data related to children with disabilities ages three through five under Section 619. DEED was unable to provide any evidence such as monitoring reports, letters of finding, or corrective actions, to demonstrate that it has a mechanism in place to ensure that it is collecting valid and reliable data related to its Section 619 programs.

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 stakeholders. Based on this analysis, OSEP finds that:

2.1 The State does not have a reasonably designed general supervision system to ensure children with disabilities participating in early intervention programs under IDEA Part C and who will participate in preschool programs under IDEA Part B experience a smooth and effective transition to those preschool programs in a manner consistent with IDEA Section 637(a)(9), as required by IDEA Sections 612(a)(9) and (11) and 616(a), and 34 C.F.R. §§ 300.124, 300.149, and 300.600 through 300.602, and 20 U.S.C. 1232d(b)(3)(A) and (E). These monitoring responsibilities include:

a. Monitoring to ensure that the child find process is being implemented year-round;

b. Validating early childhood transition data; and

c. Ensuring documentation regarding LEAs attending early childhood transition conferences and other implementation of key IDEA early childhood transition requirements.

2.2 The State does not have policies and procedures in place which ensure that all parents of potentially eligible children with disabilities receive notice of their procedural safeguards as required under 34 C.F.R. § 300.504(a)(1).

Required Actions

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

1. Policies, procedures, and protocols for:
    a. Monitoring LEAs including protocols or reviews for ensuring that the child find process being implemented year-round;
    b. Validating SPP/APR early childhood transition data for Indicator 12; and
    c. Implementing key IDEA early childhood transition requirements consistent with the requirements found at 34 C.F.R. §§ 300.124, 300.149, and 300.600 through 300.602, including procedures for documenting LEAs' attendance in early childhood transition conferences.
2. A revised State policy (and updated Special Education Handbook) requiring that all parents of potentially eligible children with disabilities receive notice of their procedural safeguards as required under 34 C.F.R. § 300.504(a)(1) upon initial referral by IDEA Part C for children transitioning from Part C to Part B.

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. Evidence that the State has monitored its LEAs on the implementation of the early childhood transition requirements through new or revised practices in the revised MOA such as, notification letters, monitoring reports, letters of findings, examples of findings related to early childhood transition, close-out reports and/or verification of correction letters, or other supporting documentation demonstrating oversight of its LEAs;
2. Examples of actual notifications from Part C to Part B and documentation of the provision of the procedural safeguards to parents upon notification, transition meetings and IDEA Part B eligibility meetings being held within timelines;

3. The State will provide with its FFY 2022 SPP/APR, due February 1, 2024, an explanation of how its data for Indicator B-12 are valid and reliable and reflect the measurement. The explanation should include a discussion of the methodology used by the State to verify the validity and reliability of the data for B-12 (the percentage of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an IEP developed and implemented by their third birthdays); and
4. Documentation demonstrating the State level training provided to LEAs on the early childhood transition procedures such as, presentation materials, attendance logs, calendar and dates of trainings provided.

FISCAL MANAGEMENT

During OSEP's monitoring activities, OSEP and DEED staff used the IDEA Part B subrecipient monitoring protocol to examine how DEED implements its general supervisory responsibility, including monitoring to ensure compliance with both fiscal and programmatic requirements.

Legal Requirements

Under IDEA and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance), SEAs are responsible for oversight of the operations of IDEA-supported activities. Each SEA must monitor its own activities, and those of its LEAs to ensure compliance with applicable Federal requirements and that performance expectations are being achieved.

In order to meet its general supervisory responsibilities, the State must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring as required under 2 C.F.R. § 200.332(b). The monitoring activities must ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved as required under the OMB Uniform Guidance at 2 C.F.R. § 200.332(d) and (e), and IDEA in 34 C.F.R. §§ 300.149, 300.600, and 300.604.

Further, under 2 C.F.R. § 200.303(a), the State is required to establish and maintain effective internal control over its IDEA grant awards that provides reasonable assurance that the State is managing those awards in compliance with Federal statutes, regulations, and the terms and conditions of those IDEA awards.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis

During OSEP's monitoring activities, OSEP and DEED staff discussed how the State implements its general supervisory responsibility, including subrecipient monitoring to ensure compliance with both fiscal and programmatic requirements. OSEP and DEED fiscal staff discussed the State's risk assessment, LEA grant application process, audit process, its fiscal monitoring of LEAs, its grant management system (GMS) and reimbursement process and reviewed its grant award notification (GAN).

OSEP examined the State's compliance with fiscal subrecipient monitoring requirements to ensure oversight of the operations of IDEA-supported activities. Specifically, OSEP and DEED discussed the State's fiscal monitoring system to ensure that DEED monitors the activities of its 54 LEAs to assure compliance with applicable Federal requirements. DEED reported it completes its fiscal monitoring activities with each LEA annually. To complete its fiscal monitoring the State reported it: 1) completes an annual risk assessment of its LEAs, 2) verifies the grant assurances and LEAs' budgets through the grant application process and 3) reviews reimbursement request from LEAs.

The State developed a risk assessment in response to the required actions from OSEP's 2015 fiscal monitoring visit. The State's risk assessment consists of two scores. The first score is a program risk score based on factors such as staff turnover, staff attendance at trainings, and significant findings from State or Federal monitoring. The second score is the "Financial and Administration Risk Score" which is calculated by the State's audit office. Based on the combined scores DEED may provide TA (telephonic or web-based), individualized assistance, or on-site monitoring. Currently, all LEAs receive telephone or web-basedTA, which consists of

information and instruction on policies and procedures on the operation of the GMS system and applicable State regulations.

The State reported it uses its grant application process to monitor its LEAs' compliance with fiscal requirements. Annually each LEA submits its application by the end of April, using the State's GMS. DEED then reviews and approves the LEA-submitted budgets and budget narratives. The State's application review process includes 50 assurances; however only one assurance (excess costs) is directly related to IDEA fiscal requirements.[4] LEAs also complete a GMS grantee checklist during the application process. The checklist addresses how LEAs code expenses, whether expenses are allowable by examination of the detail provided in its budget narrative, indirect cost information, and whether the total allocation is accounted for in the budget.

DEED also demonstrated its reimbursement process for distributing Part B funds to its LEAs. As reimbursement requests are submitted, the grant manager compares the submitted expenditure to the LEA's approved budget. If a cost is questionable, the grant manager will contact DEED special education staff to discuss the proposed expenditure.

OSEP noted the following deficiencies in the State's practices:

While the State explained its application and reimbursement processes, it did not describe a mechanism or provide evidence of monitoring its subgrantees, or LEAs, to ensure compliance with applicable Federal fiscal requirements, including the time and effort, procurement, physical inventory of property, use of IDEA Part B funds for coordinated early intervening services (CEIS), the purchase of equipment, and the financial and programmatic record retention requirements. 2 C.F.R. § 200.332. Additionally, while State grant management staff review reimbursement requests in relation to the approved budget, DEED was unable to provide evidence that any of the actual expenditures are verified through supporting documentation.

Under 2 C.F.R. § 200.403(a) and (g), allowable costs must be necessary, reasonable, and adequately documented, and charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed and supported by a system of internal control which provides reasonable assurances that the charges are accurate, allowable, and properly allocated consistent with 2 C.F.R. § 200.430(i)(1). The OMB Uniform Guidance requirement at 2 C.F.R. § 200.407 requires that prior written approval must be sought in advance of certain costs being charged to the Federal grant and as the pass-through entity, DEED has the authority to review and approve certain items of costs from its subrecipients and must have policies and procedures in place that support that review and approval process. Under 2 C.F.R. §§ 200.334 and 200.337, DEED's subrecipients are required to maintain financial records and make them available for review by the Department or DEED. In addition, 2 C.F.R. §§ 200.313 and 200.314 address the use, management, and disposition of equipment as well as an inventory of equipment and supplies. Finally, under 34 C.F.R. § 300.226, the State must ensure the activities carried out in implementing coordinated early intervening services.

Additionally, during its review of DEED's fiscal subrecipient monitoring and oversight, OSEP identified issues related to DEED's Special Education Grant Award Notification (GAN) as generated through its GMS. Under 2 C.F.R. § 200.332(a), as a pass-through entity, DEED must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information as specified by 2 C.F.R. § 200.332(a)(1)(i)-(xiii) at the time of the subaward, and if any of these data elements change, include the changes in subsequent subaward

[4] On July 29, 2022, OSEP and DEED held a subsequent meeting and discussed the State's process of implementing the LEA maintenance of effort requirements which included a review the State's policies and procedures for the eligibility standard and the compliance standard as well as the application of the LEA MOE exceptions as described in 34 C.F.R. §§ 300.203 and 300.204.

modification. OSEP's review of sample GANs found that DEED's GAN does not include the requirement under 2 C.F.R. § 200.332(a)(1)(v), subaward Period of Performance Start and End Date.

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 stakeholders. Based on this analysis, OSEP finds that:

3.1 The State does not have a reasonably designed system, policies and procedures, and internal controls for its subrecipient monitoring process consistent with 2 C.F.R. §§ 200.332(b), (d)-(f) and (h), 200.339, 200.403 and 34 C.F.R. §§ 300.149 and 300.600; and

3.2 The State is unable to ensure that every subaward is clearly identified to the subrecipient and includes the required information consistent with 2 C.F.R § 200.332(a). Specifically, OSEP's review found that DEED's GAN does not include the requirement under 2 C.F.R. § 200.332(a)(1)(v), subaward Period of Performance Start and End Date.

Required Actions

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

1. Policies and Procedures for fiscal monitoring consistent with the requirements of IDEA and the Uniform Guidance Requirements at 2 C.F.R. §§ 200.332(b), (d)-(f) and (h) and 200.339, and 34 C.F.R. §§ 300.149 and 300.600. The following requirements are examples of topics that could be included in fiscal monitoring policies and procedures:
    a. Allowable costs consistent with 2 C.F.R. § 200.403(a) and (g);
    b. Time and Effort charges for personnel duties consistent with 2 C.F.R. § 200.430(b);
    c. Prior written approval process under 2 C.F.R. § 200.407;
    d. Records and Information management to ensure fiscal records are maintained in compliance with 2 C.F.R. §§ 200.303(e), 200.333, and 200.336(a);
    e. Equipment and inventory of items purchased using Federal IDEA Part B funds consistent with 2 C.F.R. §§ 200.313 and 200.314; and
    f. The activities carried out in implementing coordinated early intervening services under 34 C.F.R. § 300.226; and
2. Evidence of revised IDEA GANs that include the information as required by 2 C.F.R. § 200.332(a), specifically the period of performance as required in 2 C.F.R. § 200.332(a)(1)(v).

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. Evidence that it has implemented its fiscal monitoring procedures as described under the first corrective action. Evidence should include completed fiscal monitoring reports, checklists or other tools developed by the State to document fiscal monitoring activities, and any letters of findings and documentation to verify the correction of any noncompliance that the State has developed and implemented.

DISPUTE RESOLUTION

During OSEP's monitoring activities, OSEP and DEED staff used the DMS Dispute Resolution protocols to examine how DEED implements its dispute resolution procedures, including State complaints, mediation, and due process procedures.

Legal Requirements

Procedural Safeguards

Under 34 C.F.R. § 300.504(a), a copy of the procedural safeguards must be provided to the parents of a child with a disability only one time a school year, except that a copy also must be provided to the parents:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint as required under 34 C.F.R. §§ 300.151 through 300.153 and upon receipt of the first due process complaint as required under 34 C.F.R. § 300.507 in a school year;
3. In accordance with the discipline procedures in 34 C.F.R. § 300.530(h); and
4. Upon request by a parent.

The State may place a current copy of the procedural safeguards notice on its website and must ensure that the notice meets the understandable language requirements in 34 C.F.R. § 300.503(c). A State's procedural safeguards must be written in a language understandable to the general public and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language, or other mode of communication of the parent, is not a written language, the State must take steps to ensure:

1. That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
2. That the parent understands the content of the notice; and
3. That there is written evidence that these requirements have been met.

State's Model Forms

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

Under 34 C.F.R. § 300.508(b) the content of the due process complaint must include:

1. The name of the child;
2. The address of the residence of the child;
3. The name of the school the child is attending;
4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;

5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to the party at the time.

Mediation

Under 34 C.F.R. §300.506, each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that— (1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and (2) is signed by both the parent and a representative of the agency who has the authority to bind such agency.

Resolution Meeting and Timelines

Under 34 C.F.R. § 300.510(a), the LEA must convene a resolution meeting no later than 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 300.511. If the LEA has not resolved the due process complaint by no later than 30 days of receiving the complaint, the due process hearing may occur. There are certain adjustments to the timelines that are expressly contemplated in the regulations. 34 C.F.R. § 300.510(c). No later than 45 days after the resolution period or the allowable adjusted period, the hearing must occur, a final decision reached, and a copy of the decision mailed to each of the parties. 34 C.F.R. § 300.515(a).

Due Process Hearing Decisions

Under 34 C.F.R. §§ 300.511 through 300.514, due process hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State. The SEA, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, must ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision.

State Complaints

Under 34 C.F.R. § 300.151, each SEA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 300.153. Under 34 C.F.R. § 300.153, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations, including the facts on which the statement is based.

In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act and consistent with the provisions in 34 C.F.R. § 300.151(b), must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement), and the appropriate future provision of services for all children with disabilities. The SEA, consistent with its general supervisory and monitoring responsibilities, must ensure that the public agency involved in the complaint implements the decision in a timely manner as required under 34 C.F.R. §§ 300.149 and 300.600.

In addition, a State's responsibility to ensure implementation of a final decision in a State complaint resolution generally would continue until the ordered corrective action has been implemented. OSEP clarified in its October 23, 2019, Letter to Anonymous that generally, any outstanding corrective action ordered through a State complaint or due process hearing to remedy the denial of appropriate services must be completed,

notwithstanding the child's relocation to another State, if the ordered relief can reasonably be implemented in the new State and the parent does not reject the remaining services under the ordered relief.

See Appendix I for a listing of additional legal requirements.

OSEP Analysis

Procedural Safeguards

During OSEP's monitoring, DEED described how it implements the State's procedural safeguards, including its dispute resolution system. OSEP staff reviewed documents submitted by DEED and those available on the State's website. The documents reviewed included the Alaska Department of Education and Early Development, Notice of Procedural Safeguards, Parental Rights for Special Education and Alaska's Special Education Parent's Guide. DEED indicated that the Alaska State Department of Education's Procedural Safeguards Notice is provided to parents through its LEAs, at the time of the initial evaluation, the initial IEP meeting, and then referenced at every IEP meeting thereafter.

Although the State's written procedures appear consistent with IDEA requirements and outline when parents must receive the procedural safeguards notice, OSEP received allegations that parents were not aware of their rights, including available dispute resolution options. Specifically, during interviews, a number of DEED staff members and contractors, LEA personnel, representatives from the State's Parent Training and Information Center (PTI), and parents of children with disabilities reported that parents were not consistently provided with a notice of their procedural safeguards in their native language, unless it is clearly not feasible to do so. Parents also were often unaware of their rights to use IDEA's State complaint, mediation, and due process hearing procedures to resolve disagreements with the public agency. Several parents indicated that the dispute resolution options were not explained to them and reported that to resolve State complaints, including complaints regarding the provision of special education services, many parents would direct their complaints only to their local school board. Further, parents in the focus groups reported they believe, overall, that the dispute resolution process is inaccessible for a large number of parents throughout the State, especially in rural areas where English is not the native language.

OSEP confirmed during interviews with the State and discussions with LEA personnel that the procedural safeguards were not consistently provided to parents in their native language. When asked if the State provided its procedural safeguards notice in different languages, the State reported that if an LEA needed the procedural safeguards to be translated into a different language, the LEA would contact the Anchorage School District, to translate and provide the procedural safeguards notice in the required language. The State also reported that in addition to working with the Anchorage School District, they have contracted with an outside entity to orally interpret the procedural safeguards notice when requested. DEED staff shared that when utilizing the contractor for the oral translation, the process requires an extra day to obtain a translator to provide the service.

State Model Forms

As stated above, OSEP reviewed documents submitted by the State including their Procedural Safeguards, which includes a copy of the State's model form. The State's model form appeared to include all the required content under 34 C.F.R. §300.153(b). However, the form also appears to require that the student's phone number be provided. When asked, State personnel indicated that this was included for youth who reach the age of majority. A phone number, while a reasonable request (especially during the recent pandemic), is not part of the required content for a due process complaint unless it is part of the available contact information for a homeless child or youth, including a youth who has reached the age of majority. If the model form requests

information beyond what is required, the State must either label it as "optional" or use other language explaining the limited circumstances under which the complainant is required to provide that information.

Mediation

In addition, it is unclear whether DEED ensures that parents are aware that they can request mediation as a dispute resolution option. DEED offers both mediation and IEP facilitation as two options available to parents in Alaska for resolving conflicts that arise during the special education process. DEED has an established contract with an outside attorney who serves as the State's mediator and handles all mediation and IEP facilitation requests. OSEP reviewed the State's contract and conducted an interview with the contractor to obtain more information about the State's process. The contractor reported that the agreement to provide mediation and IEP facilitation services has been in place since 1997, and that there are currently a total of four mediators across the State who operate under the contract. When asked to describe the nature and purpose of the services provided to parents seeking assistance in resolving issues with LEAs, the contractor stated that the issues varied from disputes regarding conflicts with the service providers to disputes regarding service provision. When describing the process used to determine whether mediation or IEP facilitation was most appropriate in resolving conflicts between parents and LEAs, the contractor stated that most parents do not know the difference between IEP facilitation and mediation, and therefore do not know which option is most appropriate in resolving their issue. The processes are described to parents, and the contractor provides guidance regarding which would be more appropriate.

OSEP requested the number of facilitated IEP meetings that have occurred over the last three years and any documentation or guidelines addressing the process that the mediators use when working with families who have requested mediation; however, the State was unable to provide this information.

If a parent requests mediation and the parties determine IEP facilitation is appropriate, then the decision to provide IEP facilitation should be documented in a formal mediation agreement. During OSEP's monitoring activities, DEED was unable to provide evidence of written mediation agreements that resulted in IEP facilitation. The failure to document mediation agreements in writing is inconsistent with 34 C.F.R. § 300.506(b)(6).

Resolution Meeting and Timelines

During the on-site discussion, DEED staff informed OSEP that it runs the resolution meeting timeline concurrent or within the 45-day due process timeline, and therefore was not providing for a separate resolution period. As a result, DEED does not have a method in place to determine whether LEAs have met the timeline to convene a resolution meeting as required in 34 C.F.R. § 300.510(a) or to determine the beginning of the due process hearing timelines.

Under 34 C.F.R. § 300.510(a), the LEA must convene a resolution meeting no later than 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under 34 C.F.R. § 300.511. If the LEA has not resolved the due process complaint by no later than 30 days of receiving the complaint, the due process hearing may occur. While a State may provide additional protections to parents of children with disabilities that are more protective than what IDEA requires, it may not lessen the IDEA protections. OSEP believes that not providing for a resolution meeting and resolution period denies parents and LEAs the opportunity to resolve the dispute prior to a hearing.[5]

[5] As a greater parental protection, a State could shorten the 45-day due process hearing timelines as long as all other parental hearing rights are not affected, including the ability of a hearing officer to grant specific extensions at the request of a party.

Due Process Hearing Decisions

OSEP and DEED also discussed the oversight of the implementation of the final due process hearing officers' decisions. DEED stated that it does not have a formal mechanism in place to ensure that hearing decisions are implemented in a timely manner. DEED noted that it may hear from a parent if the hearing decision was not implemented, and that if the State becomes aware that a hearing decision has not been implemented, DEED staff will follow up with the LEA to address the issue, as appropriate.

To ensure that students with disabilities are provided a free appropriate public education (FAPE) without undue delay, due process hearing decisions must be implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable timeframe consistent with 34 C.F.R. §§ 300.511-300.514. DEED is not, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, ensuring that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision. Finally, if necessary to achieve compliance from the LEA, there is no evidence of DEED using any appropriate enforcement actions consistent with its general supervisory responsibility under 34 C.F.R. §§ 300.600 and 300.608.

State complaints

OSEP staff reviewed Alaska's State complaint decisions for the last three years. State complaint 22-07 addressed a denial of FAPE for a student who moved to a different LEA within the State. Specifically, the State found the LEA failed to provide related services as set forth in the child's IEP. However, when considering the need for compensatory education, the complaint decision stated, "The student is now enrolled in a neighboring school district. Under these circumstances, the [school district] cannot in a straightforward fashion compensate the student for its IEP implementation failures by providing additional 'compensatory' services, since the provision of physical therapy and special education/related services/academic services is now under the jurisdiction of another school district."

In resolving a complaint in which the State has found a failure to provide appropriate services, DEED, pursuant to its general supervisory authority under Part B of the Act and consistent with the provisions in 34 C.F.R. § 300.151(b), must address the failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement), and the appropriate future provision of services for all children with disabilities. Based on OSEP's discussions with DEED and OSEP's review of State's documentation and complaint decisions, DEED was not able to demonstrate that its policies, procedures, or practices addresses the failure to provide appropriate services in resolving complaints that have raised the issue. In addition, DEED has not demonstrated that it is, consistent with its general supervisory and monitoring responsibilities, ensuring that the public agency involved in the complaint implements the decision in a timely manner as required under 34 C.F.R. §§ 300.149 and 300.600. DEED was unable to provide policies and procedures which ensure that, any outstanding corrective action ordered through a State complaint or due process hearing to remedy the denial of appropriate services is being completed, notwithstanding the child's relocation to another State, if the ordered relief can reasonably be implemented in the new State and the parent does not reject the remaining services under the ordered relief.

In resolving State complaint 22-07, in which DEED had found a failure to provide appropriate services, the State appears to have assumed, without investigation or specific findings, that the previous district could not contract or otherwise arrange for the student to receive compensatory services in the new district, but at the previous district's expense. In so doing, the State improperly excused its failure to properly address and order appropriate relief in this State complaint decision.

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 stakeholders. Based on this analysis, OSEP finds that:

4.1 The State does not have a system in place to ensure that mediation agreements that result in IEP facilitation are formalized in written mediation agreements as required by 34 C.F.R. § 300.506(b)(6);

4.2 The State's model form and instructions do not meet the content requirements under 34 C.F.R. § 300.508(b) for filing a due process complaint. Specifically, the State's model form entitled, "Notice of Request for Due Process Hearing" requires "Student Address/Phone," and the form does not make clear that inclusion of a phone number is either optional or only required as available contact information in the case of a homeless child or youth or a student who has reached the age of majority;

4.3 The State does not have procedures to ensure that LEAs are convening a resolution meeting within 15 days of receiving notice of the parent's due process complaint, as required under 34 C.F.R. § 300.510(a) or tracking the 30-day resolution period requirements under 34 C.F.R. § 300.510(b);

4.4 The State does not have mechanisms in place to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is no timeframe prescribed by the hearing officer, within a reasonable time set by the State as required under IDEA, consistent with 34 C.F.R §§ 300.511through 300.514, 300.149, and 300.600. Pursuant to its general supervision authority under 34 C.F.R. §§ 300.149 and 300.600, DEED, as the SEA, must ensure that the public agency involved in the due process hearing implements the hearing officer's decision in a timely manner, unless either party appeals the decision.; and

4.5 The State's policies and procedures related to State complaints do not address the award of a remedy for the denial of appropriate services, as required under 34 C.F.R. § 300.151(b).

Required Actions

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

1. Documentation demonstrating that it has revised its mediation procedures to ensure that agreements made as a result of mediation are formalized in a written mediation agreement;
2. A revised copy of its procedural safeguards, which includes the revision to the Notice of Request for Due Process Hearing model form which clearly indicates that the phone number is either "optional" or only required as available contact information in the case of a homeless child or youth or a student who has reached the age of majority;
3. Documentation demonstrating that it has revised its dispute resolution procedures and practices to ensure that: (i) the State has a mechanism for tracking whether an LEA convenes a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the parties agree in writing to waive the meeting or to use mediation; and (ii) if an LEA fails to convene a resolution meeting as required, the State makes a finding of noncompliance and ensures that the LEA's noncompliance is corrected as soon as possible, and in no case later than one year of the State's identification of the noncompliance;
4. Revised policies and procedures which demonstrate that the State has a mechanism to: (i) track the implementation of the due process hearing decisions; and (ii) monitor LEAs to ensure due process hearing decisions are implemented within the timeframe prescribed by the hearing officer, or if there is

no timeframe prescribed by the hearing officer, within a reasonable timeframe set by the State in accordance with the requirements in 34 C.F.R. §§ 300.511 through 300.514, 300.149, and 300.600; and

5. Documentation demonstrating that it has revised its State complaint procedures, policies, and practices to ensure that the State orders appropriate relief for a child with a disability who has been denied appropriate services, whether or not the child has moved to a different LEA within the State.

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. Evidence of the State's tracking mechanism and monitoring activities which ensure:
    a. LEAs convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the parties agree in writing to waive the meeting or to use mediation; and (ii) if an LEA fails to convene a resolution meeting as required, the State makes a finding of noncompliance and ensures that the LEA's noncompliance is corrected as soon as possible, and in no case later than one year of the State's identification of the noncompliance; and
    b. Due process hearing decisions are being implemented in a timely manner.
2. Evidence the State complaint investigators have been trained on the revised procedures and underlying IDEA requirements regarding children who have moved to a different LEA within the State.

Recommendations

1. Develop written guidelines and procedures that describe the process for receiving requests for the translation of procedural safeguards by LEAs; timelines for processing the request; and procedures for issuing the translated document to the LEA/parent, and responsible parties;
2. Provide training and guidance to all LEAs regarding the provision of the procedural safeguards notice consistent with 34 C.F.R. § 300.504(a) and 34 C.F.R. § 300.503(c); and
3. Collaborate with the State's PTI to ensure that parents understand their procedural safeguards, specifically their dispute resolution options and the differences between the options.

STATE ADVISORY PANEL

As part of the monitoring activity with Alaska, OSEP facilitated a virtual meeting with the Executive Director of Alaska's Governor's Council on Disabilities and Special Education (GCDSE) which was given the responsibility for establishing a State Advisory Panel (SAP) in accordance with IDEA.

Legal Requirements

Under 34 C.F.R. §§ 300.167-168, the State must establish and maintain an SAP for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State. The advisory panel must consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, be representative of the State population and be composed of individuals involved in, or concerned with the education of children with disabilities, including: (1) Parents of children with disabilities (ages birth through 26); (2) Individuals with disabilities; (3) Teachers; (4) Representatives of institutions of higher education that prepare special education and related services personnel; (5) State and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. § 11431 et seq.); (6) Administrators of programs for children with disabilities; (7) Representatives of other State agencies involved in the financing or delivery of related services to children with disabilities; (8) Representatives of private schools and public charter schools; (9) Not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; (10) A representative from the State child welfare agency responsible for foster care; and (11) Representatives from the State juvenile and adult corrections agencies. In addition, a majority of the members of the panel must be individuals with disabilities or parents of children with disabilities (ages birth through 26).

Under 34 C.F.R. § 300.169, the advisory panel must - (a) Advise the SEA of unmet needs within the State in the education of children with disabilities; (b) Comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities; (c) Advise the SEA in developing evaluations and reporting on data to the Secretary under section 618 of the Act; (d) Advise the SEA in developing corrective action plans to address findings identified in Federal monitoring reports under Part B of the Act; and (e) Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

OSEP Analysis

In Alaska, GSCE serves as Alaska's State Council on Developmental Disabilities in accordance with the Developmental Disabilities Act, Section 125 (42 U.S. Code § 15025) and was given the responsibility for establishing an SAP in accordance with IDEA. However, in a monitoring letter, the U.S. Department of Health and Human Services informed the GCSDE that this additional responsibility constitutes interference and noncompliance in accordance with the Developmental Disabilities Act, Section 124(c)(5)(L), February 16, 2022.[6]

The U.S. Department of Health and Human Services provided another letter in response to a request from the GCSDE to clarify the finding and provide additional details on what led to the compliance findings. This letter, dated April 19, 2022, clarifies that Alaska's State plan must solely include GCSDE information and activities,

[6] Letter to the GCSDE from the U.S. Department of Health & Human Services, Administration for Community Living, February 16, 2022.

as mandated by the Developmental Disabilities Act, and not responsibilities nor activities of the Developmental Disabilities Act which is not allowable.[7] The Executive Director reported that because of this, an SAP does not currently exist. When OSEP asked DEED about the status of the SAP, the State Director confirmed that there is no SAP at this time and indicated that there has not been a functioning SAP for approximately three years. Therefore, the State has not maintained an advisory panel, nor does it have a mechanism in place to obtain advice or public comment on matters relating to special education and related services for children with disabilities in the State in accordance with 34 C.F.R. §§ 300.167 through 300.169.

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 stakeholders. Based on this analysis, OSEP finds that:

5.1 The State does not have a SAP as required by IDEA Sec. 612(a)(21) and 34 C.F.R. §§ 300.167 through 300.169.

Required Actions

1. Within 90 days of the date of this letter, the State must provide evidence of an established SAP that meets the requirements under 34 C.F.R. §§ 300.167 through 300.169.

[7] Letter to the GCSDE from the U.S. Department of Health & Human Services, Administration for Community Living, April 19, 2022.

SIGNIFICANT DISPROPORTIONALITY

As part of the monitoring activity, OSEP staff reviewed the State's Significant Disproportionality Reporting Form submitted under Section V.B. of its FFY2020 Part B application and the State's Section 618 Coordinated Early Intervening Services (CEIS) data. OSEP staff also reviewed information in the State's Special Education Handbook and available data on the State's: 1) identification of children with disabilities by racial and ethnic group; 2) identification of children with disabilities in specific disability categories by racial and ethnic group, 3) placements of children with disabilities into particular educational settings by racial and ethnic group and data regarding the incidence, duration, and type of disciplinary removals from placement, including suspensions and expulsions. In addition, OSEP and DEED staff discussed the State's procedures and implementation of the requirements related to significant disproportionality.

Legal Requirements

States are required, under IDEA Section 618(d) and 34 C.F.R. § 300.646, to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. Under 34 C.F.R. § 300.647(b)(7), the State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under paragraphs 34 C.F.R. § 300.647(b)(1)(i)(A) through (D), and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Under 34 C.F.R. § 300.173, the State must have in effect, consistent with the purposes of Part B of IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 C.F.R. § 300.8.

Except as provided in 34 C.F.R. § 300.647(d), the State must identify as having significant disproportionality based on race or ethnicity under 34 C.F.R. § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 34 C.F.R. 300.647(b)(3) and (4) that exceeds the risk ratio threshold set by the State for that category. 34 C.F.R. § 300.647(b)(6). Where significant disproportionality is occurring, the State must engage in a review, and, if appropriate, revision of policies, procedures, and practices used in the identification, placement, or discipline of a child with a disability to ensure that they comply with the requirements of IDEA; require the LEA to publicly report on the revision of policies, practices, and procedures; and require the LEA to reserve 15% of its IDEA Part B funds to provide comprehensive coordinated early intervening services (CCEIS) to identify and address the factors contributing to the significant disproportionality. 34 C.F.R. § 300.646(d).

OSEP Analysis

During discussions with OSEP, DEED staff explained the State's definition of significant disproportionality, including the information provided in the State's FFY 2020 Part B grant application. DEED staff also explained its stakeholder engagement process and its procedures for making annual determinations of significant disproportionality, including its mechanism for reserving the IDEA Part B funds required for CCEIS. Finally, OSEP staff inquired about equity trends and issues occurring in the State.

DEED staff discussed the State's definition of significant disproportionality reported to OSEP in its FFY 2020 Part B grant application. The State uses the presumptively reasonable cell size of 10 and n size of 30. The State

set its risk ratio at 3.5. In its analysis the State used the most recent three data sets calculated annually and does use the reasonable progress flexibility. In each of the last three years, four LEAs in Alaska were required to use 15% of funds for CCEIS due to significant disproportionality.[8]

DEED also discussed its stakeholder engagement activities and how those activities led to its definition of significant disproportionality. Specifically, DEED reported it revised its definition after reviewing the different scenarios with stakeholders. Upon review, the cell size, n size and risk ratio included in DEED's definition of significant disproportionality is the same or within 0.5 of similarly situated States. In addition, based on stakeholder feedback, DEED decided to provide all LEAs with annual significant disproportionality data, regardless of whether the LEA was determined to have significant disproportionality.

DEED also discussed its procedures for making annual determinations of significant disproportionality. After the calculations are completed, DEED provides the data to its LEAs in March of each year with a report explaining any issues with their data. The State also uses a color-coded risk system based on the LEA's risk ratio. LEAs with risk ratios of 2.5 and higher are required to complete applicable sections of the "Success Gaps Tool Kit" and correct any noncompliance identified in the assessment. Intensive TA may also be provided upon request. If the LEA has a risk ratio of 3.5 or higher for less than three years, the LEA will complete additional sections of the tool kit to determine the root cause of the significant disproportionality and develop an action plan. DEED also provides intensive TA to these districts. DEED reported that it uses mentor coaches to facilitate the root cause analysis for LEAs identified with significant disproportionality. The State explained that overidentification of native Alaskan children has been ongoing concern which has led to a finding of significant disproportionality based on cognitive impairment and speech delays for native Alaskan children in two districts.

The State also described its process for ensuring that funds are reserved for CCEIS. Funds are reserved in its grant management system by State staff. Each LEA identified with significant disproportionality must also submit a CCEIS plan to the State. The CCEIS plan includes a description of the LEA's root cause analysis and the activities or intervening services the district will conduct. DEED provided evidence of its Annual Disproportionality Analysis and Report as well as its CCEIS plan template. While DEED was able to describe how it tracked expenditure of CCEIS funds through its grant reimbursement system, it was unclear whether there is ongoing monitoring of implementation of the LEAs' CCEIS plans to ensure the CCEIS funds were used to address the factors contributing to the significant disproportionality. Finally, DEED described equity trends and issues occurring in the State and the steps it has taken to address the cultural norms of Alaska natives that may be impacting the significant disproportionality data.

Conclusion and Recommendation

While DEED described its system for identifying and addressing significant disproportionality, the State should consider the potential benefit of additional oversight over LEAs' use of CCEIS funds. Specifically, OSEP recommends DEED:

1. Consider additional monitoring of the implementation of LEAs' CCEIS plans to ensure the reserved funds are spent in a timely and appropriate manner and that LEAs use these funds to address the factors they identified which contribute to significant disproportionality.

[8] See: IDEA Section 618 Data Products: Static Tables Part B Maintenance of Effort Reduction Table 4 for School Years 2018-2019, 2019-2020 and 2020-2021.

APPENDIX

Monitoring and Improvement Legal Requirements

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

1. Its general supervisory responsibility as required in 34 C.F.R. § 300.149.
2. Its monitoring responsibilities in 34 C.F.R. §§ 300.600 through 300.602, and
3. Its responsibility to annually report on performance of the State and of each LEA, as provided in 34 C.F.R. § 300.602(b)(1)(i)(A) and (b)(2).

A State's monitoring responsibilities include monitoring its LEAs' compliance with the requirements of IDEA Part B underlying the SPP/APR indicators, to ensure that the SEA can effectively carry out its general supervision responsibility under IDEA Part B, consistent with 34 C.F.R. § 300.149(a).

Under 34 C.F.R. § 300.600(b), the State's monitoring activities must primarily focus on:

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

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

Further, under 34 C.F.R. § 300.149(b), the State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in 34 C.F.R. §§ 300.600 through 300.602 and §§ 300.606 through 300.608.

In addition, under 34 C.F.R. § 300.600(a)(1), the State must monitor the implementation of IDEA Part B, and under 34 C.F.R. § 300.600(a)(4) must report annually on the performance of the State and each LEA on the targets in the State's Performance Plan. As a part of its monitoring responsibilities under these provisions, the State must use quantifiable and qualitative indicators in the priority areas identified in 34 C.F.R. § 300.600(d) and the SPP/APR indicators established by the Secretary, consistent with 34 C.F.R. § 300.600(c). Each State also must use the targets established in the State's performance plan under 34 C.F.R. § 300.601 and the priority areas described in 34 C.F.R. § 300.600(d) to analyze the performance of each LEA. 34 C.F.R. § 300.602.

Data Legal Requirements

To meet the data reporting requirements of IDEA sections 616 and 618 and 34 C.F.R. §§ 300.601(b) and 300.640 through 300.646, 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 the IDEA and the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), State educational agencies (SEAs) are responsible for oversight of the operations of IDEA-supported activities. Each SEA must monitor its own activities, and those of its local educational agencies (LEAs), to ensure compliance with applicable Federal requirements and that performance expectations are being achieved. Specifically, the SEA must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes required information at the time of the subaward. 2 C.F.R. § 200.332(a). The SEA also must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring. 2 C.F.R. § 200.332(b). The monitoring activities must ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. 2 C.F.R. § 200.332(d); also see 34 C.F.R. §§ 300.149 and 300.600. In addition, the SEA must evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, for the purposes of determining the appropriate subrecipient monitoring. 2 C.F.R. § 200.332(b). The SEA's monitoring activities also must verify that every subrecipient is audited in accordance with the Uniform Guidance and must consider enforcement actions against noncompliant subrecipients as required under the Uniform Guidance and IDEA. 2 C.F.R. §§ 200.339 and 200.332(f) and (h); 34 C.F.R. §§ 300.149, 300.600, and 300.604. Further, under 2 C.F.R. § 200.303, the SEA 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 SEA must monitor its compliance with the requirements of the Federal award.

Dispute Resolution Legal Requirements

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. §§ 300.151 through 300.153;
2. The mediation requirements in 34 C.F.R. § 300.506; and
3. The due process complaint and impartial due process hearing and expedited due process hearing requirements in 34 C.F.R. §§ 300.500, 300.507 through 300.518 and 300.532.

Mediation

Under 34 C.F.R. § 300.506(a), each SEA 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. § 300.506(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 Part B of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Under 34 C.F.R. § 300.506(c)(1)(i)–(ii), an individual who serves as a mediator may not be an employee of the SEA or the LEA that is involved in the education or care of the child and must not have a personal or professional interest that conflicts with the person's objectivity.

State Complaint Procedures

Under 34 C.F.R. § 300.151, each SEA must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 C.F.R. § 300.153. Under 34 C.F.R. § 300.153, the complaint, among other requirements, must be signed and written and contain a statement alleging that a public agency has violated a requirement of Part B of the Act or the Part B regulations, including the facts on which the statement is based. Under 34 C.F.R. § 300.153(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. § 300.152(a), the minimum State complaint procedures must include a time limit of 60 days after the complaint is filed to:

1. Carry out an on-site investigation, if the SEA determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
    a. At the discretion of the public agency, a proposal to resolve the complaint; and
    b. An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 C.F.R. § 300.506;

4. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the IDEA or of this part; and

5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains—
    a. Findings of fact and conclusions; and
    b. The reasons for the SEA's final decision.

Under 34 C.F.R. § 300.152(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. § 300.152(a)(3)(ii), or to engage in other alternative means of dispute resolution, if available in the State.

Due Process Complaint and Hearing Procedures; Resolution Process

Under 34 C.F.R. § 300.510(a), the LEA must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under § 300.511. Under 34 C.F.R. § 300.510(a)(3), the resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting; or the parties agree to use the mediation process described in 34 C.F.R. § 300.506.

Under 34 C.F.R. § 300.510(b)(1)–(2), if the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur. Under 34 C.F.R. § 300.510(c), the 30-day resolution period may be adjusted to be shorter or longer if one of the circumstances identified in that paragraph are present. Under 34 C.F.R. § 300.515(a), the public agency must ensure that not later than 45 days after the expiration of the 30-day resolution period under 34 C.F.R. § 300.510(b), or the adjusted time periods described in 34 C.F.R. § 300.510(c), a final decision is

reached in the hearing; and a copy of the decision is mailed to the parties, unless, under C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of either party.

Expedited Due Process Complaint and Hearing Procedures

Under 34 C.F.R. § 300.532(a), the parent of a child with a disability who disagrees with any decision regarding placement under 34 C.F.R §§ 300.530 and 300.531, or the manifestation determination under 34 C.F.R. § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 C.F.R. §§ 300.507 and 300.508(a) and (b). Under 34 C.F.R. § 300.532(c)(1), whenever a hearing is requested under 34 C.F.R. § 300.532(a), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 C.F.R. §§ 300.507, 300.508(a) through (c), and §§ 300.510 through 300.514, except as provided in 34 C.F.R. § 300.532(c)(2) through (4). Under 34 C.F.R. § 300.532(c)(2), the SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the due process complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

Under 34 C.F.R. § 300.532(c)(3), a resolution meeting must occur within seven days of receiving notice of the due process complaint, unless the parties agree in writing to waive the meeting or agree to use mediation. Under 34 C.F.R. § 300.532(c)(4), a State may establish different procedural rules for expedited due process hearings than it has established for other due process hearings, but, except for the timelines as modified in 34 C.F.R. § 300.532(c)(3) (governing the resolution process), the State must ensure that the requirements in 34 C.F.R. §§ 300.510 through 300.514 are met.

Significant Disproportionality Legal Requirements

States are required, under 34 C.F.R. § 300.646, to collect and examine data to determine whether significant disproportionality based on race and ethnicity is occurring in the State and LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

Where significant disproportionality is occurring, the State must engage in a review, and, if appropriate, revision of policies, procedures, and practices used in the identification, placement, or discipline of a child with a disability to ensure that they comply with the requirements of IDEA; require the LEA to publicly report on the revision of policies, practices, and procedures; and require the LEA to reserve 15% of its IDEA Part B funds to provide CCEIS to identify and address the factors contributing to the significant disproportionality.

Under 34 C.F.R. § 300.646(d), any LEA identified with significant disproportionality is required to reserve the maximum amount of funds to provide CCEIS to address factors contributing to the significant disproportionality. In addition, an LEA that is required to use 15 percent of its IDEA Part B allocation on CCEIS because the SEA identified the LEA as having significant disproportionality under 34 C.F.R. § 300.646 will not be able to reduce local maintenance of effort (MOE) under sections 616(f) and 613(A)(2)(C) of the Act.

In determining whether significant disproportionality exists in a State or LEA the State must set a reasonable risk ratio threshold; reasonable minimum cell size; reasonable minimum n-size; and standard for measuring reasonable progress if a State uses the flexibility described in 34 C.F.R. § 300.647(d)(2). 34 C.F.R. § 300.647(b). These standards must be based on advice from stakeholders, including State Advisory

Panels, as provided under section 612(a)(21)(D)(iii) of the Act; and are subject to monitoring and enforcement for reasonableness by the Secretary consistent with section 616 of the Act.

Except as provided in 34 C.F.R. § 300.647(d), the State must identify as having significant disproportionality based on race or ethnicity under 34 C.F.R. § 300.646(a) and (b) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 34 C.F.R. 300.647(b)(3) and (4) that exceeds the risk ratio threshold set by the State for that category.

The State must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under paragraphs 34 C.F.R. § 300.647(b)(1)(i)(A) through (D), and the rationales for each, to the Department at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 34 C.F.R. § 300.647(b)(1)(iv) must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

Finally, under 34 C.F.R. § 300.173, the State must have in effect, consistent with the purposes of Part B of IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 C.F.R. § 300.8.