



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

DIRECTOR

**January 17, 2023**

Honorable Jillian Balow  
Superintendent of Public Instruction  
Virginia Department of Education  
P.O. Box 2120  
Richmond, Virginia 23218  
Jillian.Balow@doe.virginia.gov

Dear Superintendent Balow:

The purpose of this letter is to summarize the current status of our review of the Virginia Department of Education's (VDOE) outstanding noncompliance first identified in OSEP's June 23, 2020 monitoring report (OSEP's monitoring report), and of the documentation you have provided to date. VDOE has submitted documents and responses to OSEP on September 18, 2020, October 29, 2020, March 4, 2021, December 21, 2021, March 11, 2022, June 10, 2022, November 3, 2022, and January 11, 2023. In addition, VDOE has communicated information in conference calls with OSEP on January 15, 2021, May 25, 2021, April 20, 2022, and January 13, 2023. As a result of these submissions, as detailed in OSEP's September 1, 2022 letter, VDOE has corrected some, but not all of the findings. This letter provides a general summary of OSEP's review and analysis of VDOE's document submissions, except for those submitted on January 11, 2023. After we have completed our review of the most recent document submission, we will provide a more detailed analysis of VDOE's actions taken to address the identified noncompliance, and additional actions, if any, that are required to close out the noncompliance.

The findings and required actions set forth in OSEP's monitoring report required VDOE to demonstrate correction as soon as possible and in no case, beyond one year after identification. In OSEP's monitoring report, OSEP included the results of its May 2019 on-site monitoring visit and put VDOE on notice of its failure to comply with the following requirements under the Individuals with Disabilities Education Act (IDEA).

- VDOE does not have procedures and practices that are reasonably designed to enable the State to exercise general supervision over all educational programs for children with disabilities administered within the State to ensure that all such programs meet the requirements of Part B of IDEA, and to effectively monitor the implementation of Part B of IDEA, as required by 20 U.S.C. §§ 1412(a)(11) and 1416(a), 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (b), 20 U.S.C. § 1232d(b)(3)(A) and (E), 34 C.F.R. § 300.600(e) and 2 C.F.R. § 200.331(d)(1)–(2).
- VDOE is not exercising its general supervisory and monitoring responsibilities to implement its State complaint resolution system in a manner consistent with all of the requirements in 20 U.S.C. § 1412(a)(11)(A) and 1416(a) and 34 C.F.R. §§ 300.149 and 300.600 and 34 C.F.R. §§ 300.151 through 300.153 for the following reason: The State does not ensure that it resolves every complaint that meets the requirements of 34 C.F.R. § 300.153 in accordance with the minimum State complaint procedures in 34 C.F.R. §

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300.152, specifically in the situation where the State has developed a communication plan with an individual parent-complainant.

- VDOE is not exercising its general supervisory and monitoring responsibilities in accordance with 20 U.S.C. §§ 1412(a)(11)(A) and 1416(a) and 20 U.S.C. § 1232d(b)(3)(A) and 34 C.F.R. §§ 300.149(a) and (b) and 300.600(a) and (d)(2) with regard to the following:
  - a. VDOE does not ensure and document that LEAs track the implementation of the timelines for the resolution process for due process complaints filed by parents in 34 C.F.R. § 300.510 and for calculating the beginning and expiration of the 45-day due process hearing decision timeline in 34 C.F.R. § 300.515(a), unless under 34 C.F.R. § 300.515(c), a hearing officer grants a specific extension of the 45-day timeline at the request of a party to the hearing; and
  - b. VDOE does not ensure that its LEAs track the implementation of the resolution timelines in 34 C.F.R. § 300.532(c)(3) and that hearing officers track the implementation of the expedited due process hearing timelines in 34 C.F.R. § 300.532(c)(2) in order to properly track due process hearing decision timelines.
- VDOE does not have procedures and practices that are reasonably designed to ensure a timely resolution process for due process complaints filed by parents or the timely adjudication of due process complaints that result in due process hearings, or a timely resolution process for expedited due process complaints, and the timely adjudication of expedited due process hearings.
- Because VDOE does not have a mechanism to reliably determine the date on which the 45-day due process hearing timeline in 34 C.F.R. § 300.515(a) commences, VDOE is unable to report valid and reliable data on the adjudication of due process complaints as required under Section 618(a)(1)(F) of IDEA.
- Because VDOE does not have a mechanism for reliably determining whether expedited hearing timelines are met, the VDOE is unable to report valid and reliable data on expedited due process hearings in accordance with Section 618(a) of IDEA.
- VDOE does not have procedures and practices that are reasonably designed to implement a mediation process that is consistent with the requirements of 20 U.S.C. § 1415(e) and 34 C.F.R. § 300.506. Specifically, the State's practice of having its mediation coordinator co-mediate when the mediator is new and permitting its mediation coordinator to be present at the mediation sessions is inconsistent with the requirement in 34 C.F.R. § 300.506(c)(1) that the State's procedures ensure that a mediator is not an employee of the SEA and has no personal or professional interest that would conflict with the mediator's objectivity.
- OSEP concluded the provision of Virginia's regulation, 8VAC20-81-170(B)(2)(a) and (e), are inconsistent with 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.502, because the State's regulation restricts a parent's right to an independent educational evaluation (IEE) at public expense to only those areas in which the public agency had previously evaluated the child.

As explained in OSEP’s letter dated September 1, 2022, OSEP determined VDOE demonstrated compliance in the areas related to mediation. With respect to general supervision, OSEP determined VDOE’s evidence of its revised general supervision and monitoring system was sufficient to close the related finding while reserving the right to revisit the matter based on any subsequent information OSEP may receive.

OSEP further concluded VDOE has not provided sufficient information to demonstrate correction of the identified noncompliance related to State complaint procedures, due process complaint and hearing procedures, and IEEs. OSEP scheduled a follow-up phone call with VDOE on August 30, 2022, which was rescheduled by VDOE to September 8, 2022, and subsequently rescheduled again to October 5, 2022, to discuss the outstanding OSEP DMS findings. On October 4, 2022, VDOE informed OSEP that it was going to decline to participate in the scheduled call because, in VDOE’s view, some of the relevant OSEP DMS subject matter was being raised as the subject of a Federal class action lawsuit filed in September of 2022. However, VDOE has since confirmed and participated in a follow-up call with OSEP on January 13, 2023.

During the January 13, 2023 conference call, OSEP noted that a number of case closure records indicated that timelines for due process hearings were improperly extended at the behest of the hearing officer, with no indication that they were requested by either party to the hearing. The IDEA implementing regulations only provide for a hearing officer to grant specific extensions of time at the request of either party. 34 .C.F.R. § 300.515(a).

Relatedly, OSEP reviewed Virginia’s Regulation, 8VAC20-81-210(P)(9)(b), which states as follows:

*8VAC20-81-210(P)(9)(b) In instances where neither party requests an extension of time beyond the period set forth in this chapter, and mitigating circumstances warrant an extension, the special education hearing officer shall review the specific circumstances and obtain the approval of the Virginia Department of Education to the extension.*

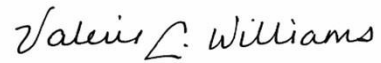
The practice noted in the case closure records and, on its face, the Virginia regulation appear inconsistent with 34 C.F.R. § 300.515(a). As we indicated on the January 13, 2023 call, the practice and the Virginia regulation also need to be addressed.

We believe that the conference call held on January 13, 2023, was productive and we are committed to continuing to engage with VDOE to assist the State in closing the remaining DMS findings. However, please note that the noncompliance first identified in OSEP’s monitoring report and follow-up letters include items that represent longstanding required correction. If VDOE is unable to demonstrate full compliance with the IDEA requirements identified in OSEP’s monitoring report, this could result in the imposition of Specific Conditions on VDOE’s IDEA Part B grant award and could affect VDOE’s determination under section 616(d) of IDEA.

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If you have any questions, please contact Koko Austin, your OSEP State Lead, at 202-245-6720 or Ayorkor.Austin@ed.gov.

Sincerely,

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

Valerie C. Williams

cc: Samantha Hollins, State Director of Special Education