

# OSEP MONTHLY DMS TECHNICAL ASSISTANCE CALL

**DISPUTE RESOLUTION PROTOCOL  
DUE PROCESS | MEDIATION**

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# MSIP Division Director



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# Agenda

- ▶ DMS Updates: Stakeholder Input and Local Component
- ▶ Dispute Resolution: Due Process | Mediation
- ▶ Framework
  - Definition
  - Overarching Questions
  - Historical Findings

# Update: DMS General Process

- ▶ [Update on Stakeholder Input Process and Local Component Activities](#) (PDF) *Link will require a login for access to ENGAGE OSEP*
- ▶ Next month's National TA Call, April 28, 2022 at 4PM, will cover the Stakeholder Input Process and the Local Component Activities
  - Stakeholder Input: PTIs, P&As, and SAPs/SICCs
  - Local Component: MSIP Teams will speak with local practitioners and providers

# Dispute Resolution Protocols

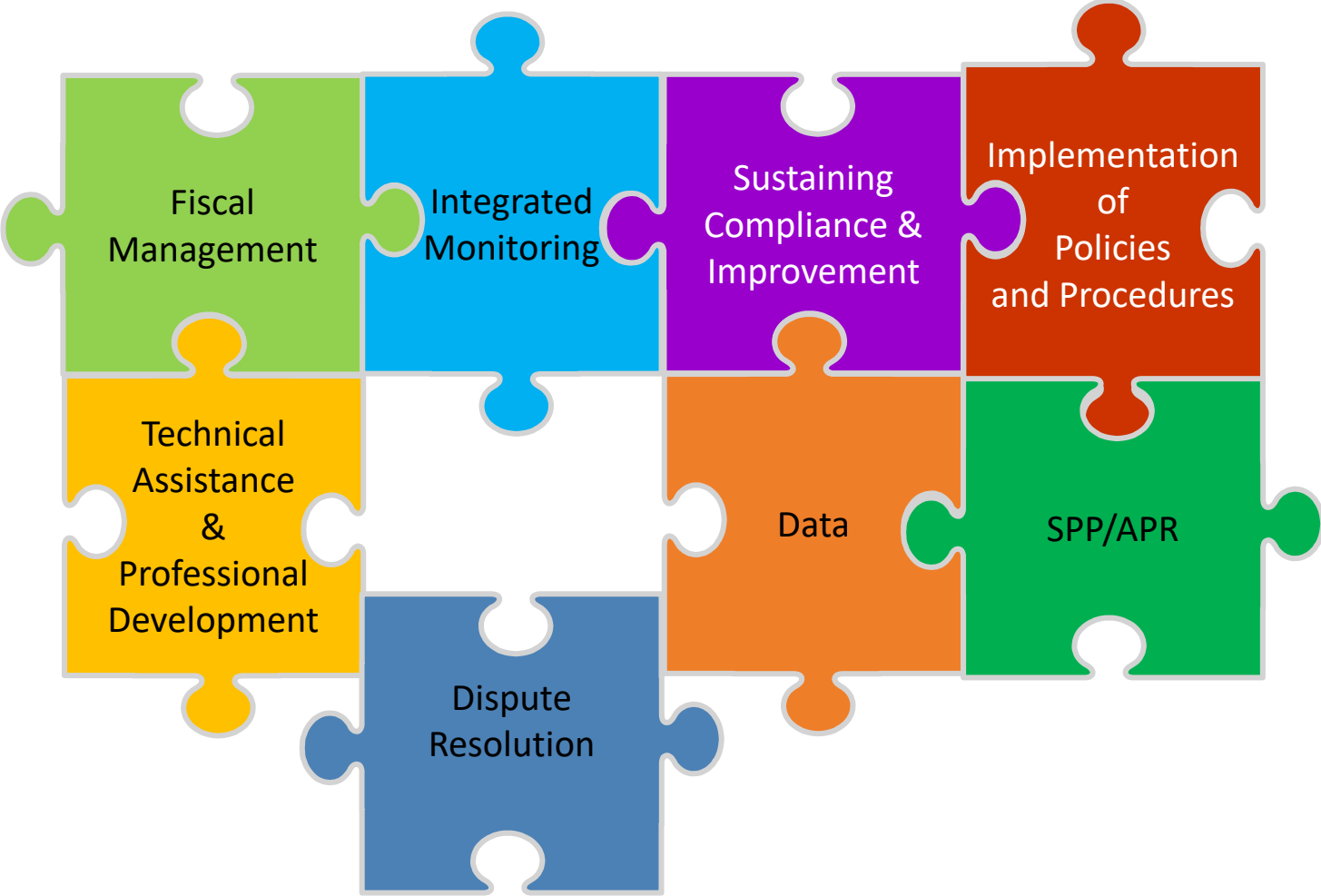
## ► Dispute Resolution

- Parts B and C — Dispute Resolution — **State Complaint** (Word)
- Parts B and C — Dispute Resolution — **Due Process** (Word)
- Parts B and C — Dispute Resolution — **Mediation** (Word)


# Dispute Resolution Resources

- ▶ [Question and Answers](#) about Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B) (July 23, 2013)
- ▶ [Dear Colleague Letter](#) on Use of Due Process Procedures After a Parent has Filed a State Complaint (April 15, 2015)
- ▶ IDEA Website: [Dispute Resolution](#)
- ▶ [Self-Assessments](#)
- ▶ [Center for Appropriate Dispute Resolution in Special Education](#) (CADRE)
- ▶ 618 Data: [Part B](#) | [Part C](#)

## 8 Key Components



# Dispute Resolution (DR) Framework

IF A STATE HAS	THEN	THEN	THEN	INTENDED OUTCOME
<p><b>An effective dispute resolution system</b></p>	<p>Parents and other stakeholders will be informed of their rights under the law.</p>	<p>The State timely resolves disputes about IDEA procedures and the provision of FAPE in the LRE or EIS.</p>	<p>LEA/EIS programs provide FAPE in the LRE/EIS to eligible infants, toddlers, children and youth with disabilities.</p>	<p>An effective dispute resolution system will contribute to improved outcomes for infants, toddlers, children and youth with disabilities and their families.</p>
<p><b>DEFINITION</b></p>	<p><b>EXAMPLES OF EVIDENCE</b></p>	<p><b>EXAMPLES OF EVIDENCE</b></p>	<p><b>EXAMPLES OF EVIDENCE</b></p>	
<p>A system designed as part of a State's general supervisory responsibility to ensure implementation of IDEA's dispute resolution procedures consistent with IDEA requirements.</p>	<ul style="list-style-type: none"> <li>• Procedural safeguards notice (dispute resolution components)</li> <li>• Evidence of receipt of Procedural Safeguards (signature page, file review during monitoring)</li> <li>• Model forms for State complaints and due process</li> <li>• Review of communication to MSIP Customer service</li> <li>• News articles or pending lawsuits</li> <li>• State websites for access to forms and safeguards</li> <li>• LEA/EIS program examples of model forms</li> <li>• Policies and procedures regarding timing of safeguards, use of model forms, and information required in State complaints and hearing notices</li> <li>• Information on requesting mediation (info in notice, website, etc.)</li> <li>• Evidence of availability of hearing decisions to SAP/ICC and/or public</li> </ul>	<ul style="list-style-type: none"> <li>• Section 618 data</li> <li>• Evidence of hearing officer's decisions, state complaint actions, mediation agreements</li> <li>• Evidence of training provided to hearing officers and mediators</li> <li>• Description of how the Due Process System is established in the State</li> <li>• Part C programs – policies and procedures for Part C due process hearing procedures or adoption of Part B hearing procedures</li> <li>• Documentation that appeal rights are included in hearing decisions</li> <li>• Tracking documents for Dispute resolution systems (State Complaint, Due Process and mediation)</li> <li>• Policies around timelines</li> </ul>	<ul style="list-style-type: none"> <li>• Timely Correction of noncompliance (individual and systemic)</li> <li>• Evidence of implementation of remedies ordered by hearing officer or State (compensatory services, monetary reimbursement, IEP/IFSP Team meetings)</li> <li>• Evidence of technical assistance</li> <li>• Review any Memorandums of agreements or contracts with the entity responsible for conducting the hearings</li> <li>• Any supplemental guides or Q &amp; A Documents the States have developed to provide guidance to their Stakeholders related to Dispute Resolution activities</li> </ul>	





# DUE PROCESS PROTOCOL

## DISPUTE RESOLUTION



# Due Process Protocol

## ▶ Due Process:

- Does the State have policies, procedures, and practices that are reasonably designed to implement the due process complaint requirements of IDEA?
- **Component Definition: DISPUTE RESOLUTION**—A system required under IDEA and designed as part of a State’s general supervisory responsibility to ensure implementation of IDEA’s dispute resolution procedures (i.e., State complaints, **mediation**, and **due process complaints** and **due process hearings**, including the **resolution process required under Part B**), consistent with IDEA requirements.

# Due Process Overarching Questions

- A. How does the State ensure that parties are **informed** of the **due process complaint requirements**, including access to the State's model Due Process Complaint form?
- B. How does the State **ensure that hearing officers** have the necessary **knowledge and ability to conduct due process hearings** and issue **written decisions**?
- C. How does the State **ensure the impartiality** of the due process **hearing officers**?
- D. How does the State ensure that LEA/EIS providers **properly implement the resolution process**? (resolution meetings)

# Due Process Overarching Questions +

- E. How does the State ensure that **written** due process hearing **decisions are issued** within required **timelines**?
- F. How does the State **ensure that expedited due process hearings** are **implemented consistently** with IDEA requirements? What are the **barriers that impede** the State's ability to ensure LEAs/EIS providers **correct noncompliance in a timely manner**?
- G. How does the State ensure the **implementation of due process** hearing officer **decisions**?
- H. How does the State **use information** from due process hearing decisions in its **general supervision system**?

# Due Process Documents for Review

- ▶ Procedural safeguards notice
- ▶ Model forms for due process complaints, if available
- ▶ Policies and procedures related to due process
- ▶ If available on the State website, State educational agency (SEA)/Lead Agency (LA) due process hearing decisions

# Due Process Documents for Review +

- ▶ Any supplemental guides or Q & A documents the State has developed to provide guidance to its stakeholders related to dispute resolution activities
- ▶ Evidence of training provided to hearing officers and mediators
- ▶ Description of how the due process system is established in the State
  - One-tier system: Hearing is conducted by the SEA/LA.
  - Two-tier system: Responsibility for conducting the hearing rests with the local educational agency (LEA)/early intervention service (EIS) providers. The aggrieved party has the right to appeal the LEA's/EIS provider's decision to the SEA/LA where there is a right of appeal to the State.
- ▶ Any memorandums of agreement or contracts with the entity responsible for conducting the hearings

# Due Process Hearings Under Part B

## Under Part B of the IDEA

- ▶ States may choose to have a one-tier due process system or a two-tier due process system.
- ▶ This option is also available to Part C programs that adopt the Part B due process procedures.
- ▶ If the State has adopted a one-tier due process hearing system, the SEA is responsible for conducting the due process hearing.
- ▶ If the State has adopted a two-tier due process hearing system, the public agency directly responsible for the education of the child is responsible for conducting the due process hearing, and a party aggrieved by the decision has the right to appeal to the SEA/LA.



# Due Process Hearings Under Part C

## Under Part C of the IDEA

- ▶ The LA must adopt and make available to parties either:
  - (a) the Part C due process hearing procedures under Section 639 of the Act through [34 C.F.R. § 303.430\(d\)\(1\)](#) and [§ 303.435 through 303.438](#) or
  - (b) the Part B due process hearing procedures under Section 615 of the Act through [34 C.F.R. § 303.430\(d\)\(2\)](#) and [§ 303.440 through 303.449](#).
- ▶ There are different timeline requirements for these two options which are addressed in regulation described above.
- ▶ LAs indicate to OSEP whether they have adopted for resolution of IDEA Part C matters their Part B or Part C due process hearing procedures in their Annual Performance Report (APR) or 618 EMAPS dispute resolution data.



# Two-Tier Due Process Systems

The following States implement a two-tier due process system (current as of March 2022):

Part B	Part C
Kansas	Nevada
Kentucky	Ohio
Nevada	Oklahoma
New York	
Ohio	
Oklahoma	
South Carolina	



# HISTORICAL FINDINGS

## [LINK TO PREVIOUS MONITORING REPORTS](#)

### DUE PROCESS

**PLEASE NOTE:** OSEP MAINTAINS A PUBLIC LISTING OF THE MOST RECENT THREE YEARS OF REPORTS AND LETTERS, YOU MAY CONTACT THE DEPARTMENT FOR EARLIER YEARS.

# Common Findings: Due Process

- ▶ Convening of resolution sessions
- ▶ Tracking mechanisms for resolution meetings and hearing decisions
- ▶ Timely decisions
- ▶ Model Forms
- ▶ Availability of redacted final decisions to public and State advisory panel
- ▶ Timely implementation of corrective actions

# Due Process: Model Forms and Availability

## Finding: Model Forms and Publicly Available Due Process Hearing Findings/Decisions

- ▶ OSEP found that the State has failed to demonstrate compliance with requirements regarding the voluntary use of a State's model due process hearing forms (34 C.F.R. § 300.509(a)).
- ▶ In addition, OSEP found that the State had failed to demonstrate compliance regarding the transmission of due process findings and hearing decisions to the State advisory panel (34 C.F.R. 300.513(d)(1)) and making findings and decisions available to the public (34 C.F.R. § 300.513(d)(2)).

# Due Process: Access to Hearing Decisions

## Finding: Access to Hearing Decisions

- ▶ OSEP concluded that a State's policy and practice of requiring the public to rely on a State's FOIA request mechanism to access due process findings and decisions is inconsistent with the requirement under 34 C.F.R. § 300.513(d)(2).

# Due Process: Implementation of Hearings

## **Finding: Implementation of Due Process Hearing Decisions**

- ▶ OSEP determined that an SEA did not ensure that the public agency involved in the due process hearing was implementing the hearing officer's decision in a timely manner.
- ▶ Specifically, the State informed OSEP that it did not have procedures in place to ensure the implementation and tracking of due process hearing decisions.

# Due Process: Hearing Extensions

## Finding: Due Process Hearing Extensions

- ▶ Based on a State's reported 618 data for the 2012-2015 reporting years, a State had reported above 75% of fully adjudicated hearings with extended timelines. Further, based on the review of documents, analysis of data, and interviews with a State and local personnel, OSEP determined a State did not have procedures in place to ensure that independent hearing officers were granting extensions consistent with 34 C.F.R. § 300.515(c).

# Due Process: Timeline

## Finding: Due Process Timeline

- ▶ Based on the review of documents and interviews with State personnel, OSEP determined that a specific State policy, which allowed parties involved in the due process hearing to move the hearing off-calendar, in its current form, was inconsistent with 34 C.F.R. § 300.515(c).
- ▶ Specifically, the off-calendar policy permitted parties to delay scheduling of a hearing for up to six months in the absence of a party's request for a specific extension of the 45-day timeline for issuing a final decision in the hearing in accordance with 34 C.F.R. § 300.515(c).



# Due Process: Resolution Meetings

## Finding: Resolution Meetings

- ▶ OSEP determined that a State did not have procedures to ensure that the LEA convened a resolution meeting within 15 days of receiving notice of the parent's due process complaint, unless the parties agreed in writing to waive the meeting or to use mediation, in accordance with 34 C.F.R. § 300.510(a) and (b).
- ▶ The State did not have a tracking mechanism for determining when the resolution period had concluded and the 45-day hearing timeline in 34 C.F.R. § 300.515(a) commenced if the resolution process was unsuccessful in resolving the parent's due process complaint.



# MEDIATION PROTOCOL

## DISPUTE RESOLUTION

# Mediation Protocol

## ► Mediation:

- **Does the State have policies, procedures, and practices that are reasonably designed to implement the mediation requirements of IDEA Parts B and C in 34 C.F.R. §§ 300.506 and 303.431 respectively?**
- **Component Definition: DISPUTE RESOLUTION**—A system required under IDEA and designed as part of a State’s general supervisory responsibility to ensure implementation of IDEA’s dispute resolution procedures (i.e., State complaints, mediation, and due process complaints and due process hearings, including the resolution process required under Part B), consistent with IDEA requirements.

# Mediation Overarching Questions

- A. How does the State **ensure that parties to disputes** involving any matter under Part B or Part C of IDEA, including matters arising prior to the filing of a due process complaint, can **resolve disputes through a mediation** process?
- B. How does the State ensure that **mediation** is both **voluntary and confidential**?
- C. How does the State ensure that **mediators** are **qualified and impartial**?
- D. How does the State ensure **mediation agreements** are **enforceable**?

# Mediation Documents for Review

- ▶ The State's SPP/APR submission for Indicators B-16 (Part B) or C-10 (Part C)
- ▶ Prior written notice and procedural safeguards notice [34 C.F.R. §§ 300.503](#) and [300.504](#) for Part B and [34 C.F.R. §§ 303.404](#) and [303.421](#) for Part C
- ▶ Policies and procedures related to mediation
- ▶ Any supplemental guides or Q & A Documents the State has developed to provide guidance to its stakeholders related to dispute resolution activities

# Mediation Documents for Review +

- ▶ Any forms or instructions the State provides to parents and local educational agencies (LEAs)/early intervention service (EIS) providers to request mediation
- ▶ Description of how the mediation system is established in the State
- ▶ Evidence of training provided to mediators

# HISTORICAL FINDINGS

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### MEDIATION

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# Common Findings for Mediation

- ▶ Qualified and impartial mediators conducting mediation
- ▶ Selecting mediators on a random, rotational, or impartial basis



# Mediation: Conflict of Interest

## Finding: Conflict of Interest

- ▶ OSEP determined that a State had its mediation coordinator, an employee of the SEA, co-mediate when the mediator was new, in addition to being able to be called to discuss information during the mediations. This practice is inconsistent with IDEA. 34 C.F.R. § 300.506(c)(1).
- ▶ State's must ensure that mediators are not an employee of the SEA/LA and has no personal or professional interest that would conflict with the mediator's objectivity.

# Mediation: Policies and Procedures

## Finding: Written Policies and Procedures

- ▶ OSEP determined that a State had not demonstrated that it had procedures and practices that were reasonably designed to implement all of the dispute resolution requirements in IDEA.
- ▶ Specifically, OSEP found that the State had not adopted written procedures for dispute resolution processes including procedures for state complaints, mediation, and due process hearings to implement the requirements under IDEA.



# OSEP

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