

OSEP MONTHLY DMS TECHNICAL ASSISTANCE CALL

**DISPUTE RESOLUTION PROTOCOL
STATE COMPLAINTS**

FEBRUARY 2022



Agenda

- ▶ DMS Updates
- ▶ Dispute Resolution: State Complaints
- ▶ Framework
 - Definition
 - Overarching Questions
 - Historical Findings

Updates: Document Requests

General Resources

- ▶ [DMS 2.0 Document Review & Request Template](#) (Word)
- ▶ When sending documents, make sure it is clear to OSEP under which component the document should be considered
- ▶ We recognize there may be some cross over in your pieces of evidence, across multiple components, however this will assist in our preparation for the interviews

Updates: Document Requests +

Considerations when sending documents

- ▶ Use the Document Request Template to list the name/resource to be considered for the component area
- ▶ Send documents for one component area together in one email/zip
- ▶ Develop an online file system that groups documents by component area
- ▶ Use an identifier on the document or resource that clearly identifies which component it would be connected

Updates: Document Requests

Suggested identifiers from the Component Areas

- ▶ Integrated Monitoring (MON)
- ▶ Sustaining Compliance & Improvement (IMP)
- ▶ Data and SPP/APR (DATA)
- ▶ Dispute Resolution (DR)
 - State Complaint (DR-SC)
 - Due Process (DR-DP)
 - Mediation (DR-M)

Dispute Resolution Protocols

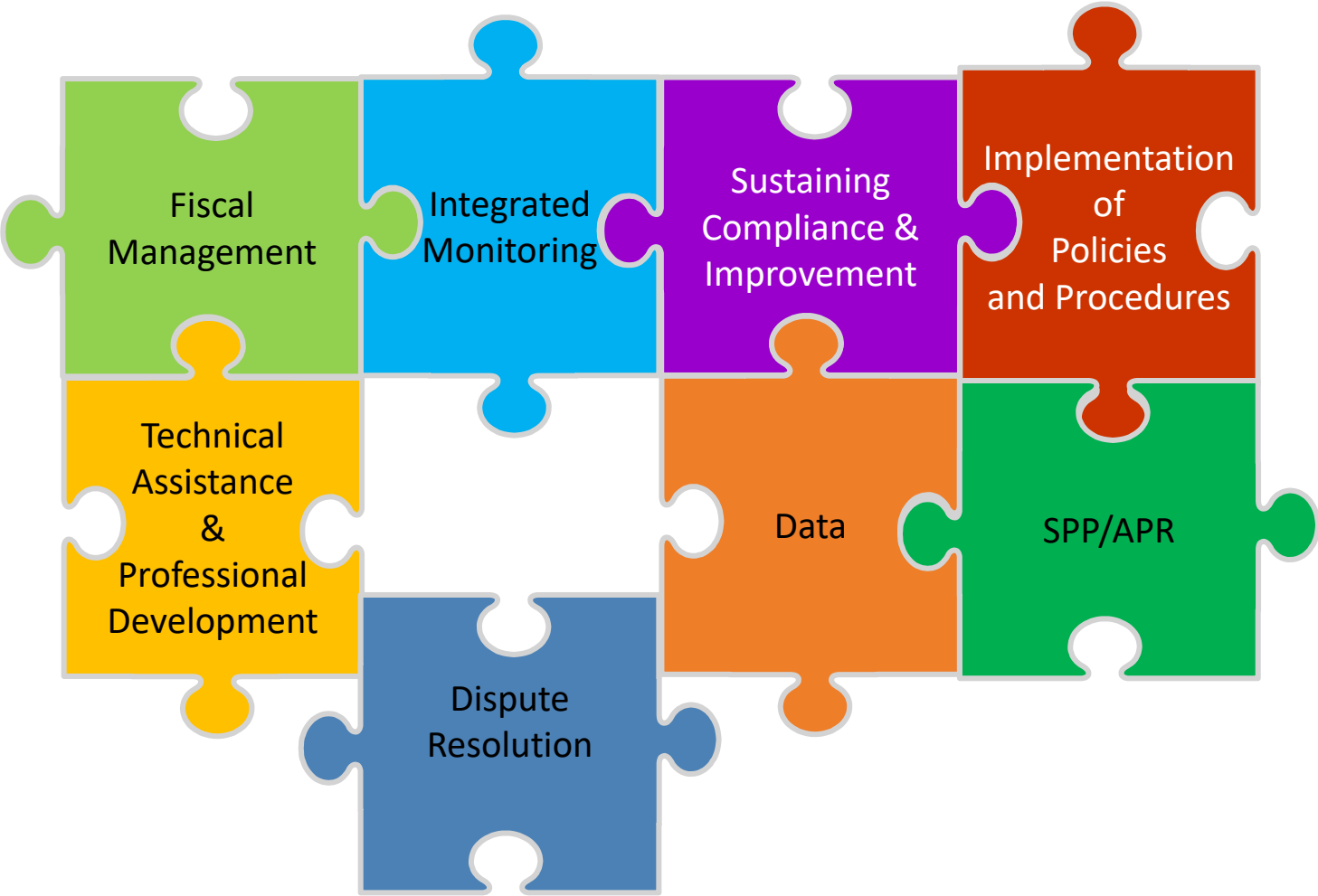
▶ Dispute Resolution

- 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)

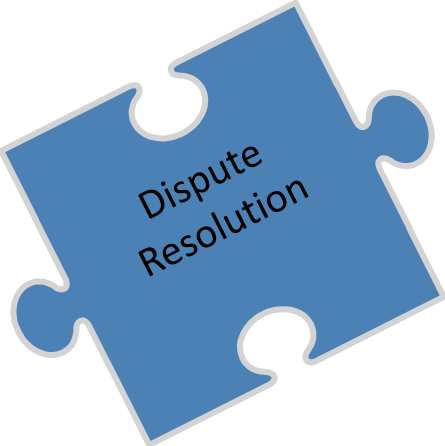
Dispute Resolution Resources

- ▶ [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>An effective dispute resolution system</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>DEFINITION</p>	<p>EXAMPLES OF EVIDENCE</p>	<p>EXAMPLES OF EVIDENCE</p>	<p>EXAMPLES OF EVIDENCE</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"> • Procedural safeguards notice (dispute resolution components) • Evidence of receipt of Procedural Safeguards (signature page, file review during monitoring) • Model forms for State complaints and due process • Review of communication to MSIP Customer service • News articles or pending lawsuits • State websites for access to forms and safeguards • LEA/EIS program examples of model forms • Policies and procedures regarding timing of safeguards, use of model forms, and information required in State complaints and hearing notices • Information on requesting mediation (info in notice, website, etc.) • Evidence of availability of hearing decisions to SAP/ICC and/or public 	<ul style="list-style-type: none"> • Section 618 data • Evidence of hearing officer's decisions, state complaint actions, mediation agreements • Evidence of training provided to hearing officers and mediators • Description of how the Due Process System is established in the State • Part C programs – policies and procedures for Part C due process hearing procedures or adoption of Part B hearing procedures • Documentation that appeal rights are included in hearing decisions • Tracking documents for Dispute resolution systems (State Complaint, Due Process and mediation) • Policies around timelines 	<ul style="list-style-type: none"> • Timely Correction of noncompliance (individual and systemic) • Evidence of implementation of remedies ordered by hearing officer or State (compensatory services, monetary reimbursement, IEP/IFSP Team meetings) • Evidence of technical assistance • Review any Memorandums of agreements or contracts with the entity responsible for conducting the hearings • Any supplemental guides or Q & A Documents the States have developed to provide guidance to their Stakeholders related to Dispute Resolution activities 	



State Complaint DR Protocol

▶ State Complaints:

- **Does the State have policies, procedures, and practices that are reasonably designed to implement the State 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.

State Complaints Overarching Questions

- A. How does the State ensure that **parents and others** have **access to the State's model** State complaint **form under IDEA Part B**?
- B. How does the State ensure that **parents and others** have **access to general information** about the State complaint **procedures under IDEA Part C**?
- C. What are the State's requirements for **filing and accepting a State complaint**?
- D. What are the State requirements regarding the **scope of allegations** and **relief** that may be included **in a State complaint**?
- E. How does the State ensure the **timely resolution of State complaints**?

State Complaint Overarching Questions +

- F. Under what conditions does the State **extend the 60-day** State complaint **timeline**?
- G. How does the State **resolve a State complaint**?
- H. How does the State **ensure the implementation** of the State **complaint decisions**?
- I. How does the State **use information** from State complaint decisions **in its general supervision system**?

State Complaint Documents for Review

- ▶ Procedural safeguards notice
- ▶ Model forms for State complaints, if available
- ▶ Policies and procedures related to the resolution of State complaints
- ▶ If available on the State website, State Education Agency (SEA)/Lead Agency (LA) State complaint decisions

State Complaint Documents for Review +

- ▶ Any supplemental guides or Q & A Documents the State has developed to provide guidance to its stakeholders related to the differences in the State complaint and due process procedures
- ▶ Description of how the State complaint system is established in the State



HISTORICAL FINDINGS

[LINK TO PREVIOUS MONITORING REPORTS](#)

STATE COMPLAINTS

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: State Complaints

▶ **Model Forms**

- Parents are not required to use the model form
- States may not require additional information in order to file the form

▶ **Report Timeline**

- States were not meeting the 60-day timeline
- Even if the State has an appeal process, the report must still be issued within the 60-day timeline.

▶ **Systemic Complaints**

- States were not investigating allegations that were system wide, only individual level allegations.

Common Findings: State Complaints +

- ▶ Despite a complaint being filed with multiple allegations, a State only investigated some rather than all allegations.
- ▶ Granting extensions for exceptional circumstances without respect to a particular complaint.
- ▶ States did not have mechanisms to ensure corrective actions were implemented in a timely manner.
- ▶ States did not independently make a decision on a particular allegation.

Procedural Safeguards

Finding : Procedural Safeguard Notice

- ▶ OSEP determined that a State did not ensure that their procedural safeguards notice was provided to parents at all the times specified under 34 CFR § 300.151 through 300.153, and 300.504(a).
- ▶ Specifically, personnel from a State informed OSEP that the procedural safeguards notice was not provided to the parent when the parent files the first State complaint in a school year.

Finding : Procedural Safeguards Notice

- ▶ A State's Procedural Safeguard's Notice did not contain all requirements regarding State complaints, due process hearings, or mediation.
- ▶ The State had to revise its procedural safeguard notice to include all the requirements and submit a copy of the revised notice to OSEP. In addition, the State had to ensure that all staff were using the revised procedural safeguard notice.

Finding- State's Model Form

- ▶ OSEP determined while a State had procedures in place to ensure the timely resolution of State complaints in accordance with IDEA requirements, a State failed to demonstrate compliance with requirements regarding the voluntary use of a State's model forms.
- ▶ 34 C.F.R. § 300.509

Timely Resolution Example 1

Finding : Timely Resolution of State Complaints

- ▶ OSEP determined that once a State sets aside issues in a State complaint that were also the subject of a due process complaint in accordance with 34 CFR §300.152(c)(1), a SEA did not have a mechanism for resolving those issues, when the hearing officer dismisses the due process complaint or does not rule on the substance of the due process complaint.
- ▶ Specifically, a state did not apply the 60-day time limit and procedures described in 34 CFR § 300.152(a) and (b) to resolve the complaint. Rather, a SEA relied on the parties of the State complaint to notify them that the due process hearing did not address the issue.



Timely Resolution Example 2

Finding : Timely Resolution of State Complaints

- ▶ OSEP determined that a State had procedures that set aside a State complaint when the parties were engaged in mediation under 34 CFR § 300.506, regardless of whether the parties agreed to extend the 60-day complaint resolution timeline to engage in mediation.
- ▶ Further, once a SEA had set aside a State complaint to allow for the parties to engage in mediation, a State did not have a process to ensure that when mediation was not successful in resolving the dispute, the complaint was resolved within 60 days after the complaint was filed, as specified in 34 CFR §300.152(a).



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