

DMS

REPORT

DIFFERENTIATED MONITORING AND SUPPORT

OFFICE OF SPECIAL EDUCATION PROGRAMS

U.S. DEPARTMENT OF EDUCATION

STATE **MONTANA**

DATE **MAY 16, 2024**

IDEA **PART B**

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

DIRECTOR

May 16, 2024

By Email

Honorable Elsie Arntzen
Superintendent of Public Instruction
Montana Office of Public Instruction
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Helena, Montana 56920

Email: elsie.arntzen@mt.gov

Dear Superintendent Arntzen:

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's) Office of Special Education Programs (OSEP). As part of its DMS process, States are monitored on their general supervision systems which encompass 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
- Significant Disproportionality

This DMS monitoring report summarizes OSEP's review of IDEA Part B requirements regarding these monitoring priorities and components. In May and June 2023, OSEP conducted interviews with representatives from the State's educational agency (SEA), the Montana Office of Public Instruction (OPI), including staff from OPI's Office of Student Support Services. In addition to staff interviews, OSEP reviewed publicly available information, OPI's special education policies, procedures, guidance, written monitoring procedures, monitoring protocols, risk assessment, actual monitoring reports, sample forms, and other related documents submitted by

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

the State. OSEP also solicited feedback from interested parties and local level staff 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, OSEP has identified nine findings of noncompliance with IDEA requirements described in further detail in the monitoring report, including any required actions. As part of its required actions, the State must review its assurances under Sections II.A.3 and 7 of its Federal fiscal year (FFY) 2024 IDEA Part B grant application to ensure that, for any finding for which a specific assurance is needed, the State’s responses are consistent with the specific assurance required as part of finding 1.3 below.

OSEP has not identified any noncompliance in the data component, therefore, this section is not included in the narrative below. OSEP’s review of monitoring priorities and components of general supervision did not include an examination of the implementation of the IDEA Part B 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.

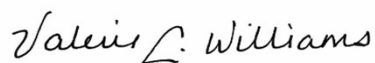
Summary of Monitoring Priorities and Outcomes

MONITORING COMPONENT	FINDINGS SUMMARY
1. Monitoring and Improvement	<p>1.1 OSEP finds that the State does not have a reasonably designed general supervision system to ensure the identification of noncompliance and that each educational program for children with disabilities meets the IDEA Part B requirements under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p> <p>1.2 OSEP finds that the State does not have a general supervision system that is reasonably designed to verify correction of noncompliance in a timely manner, as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p> <p>1.3 OSEP finds that the State has policies, procedures, and practices that are inconsistent with 34 C.F.R. §§ 300.111, 300.122, and 300.301. Specifically, the State’s use of Response to Intervention (RTI) strategies is being used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability under 34 C.F.R. § 300.8.</p>
2. Fiscal Management: Subrecipient Monitoring	<p>2.1 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).</p> <p>2.2 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, 200.339, 200.303, and 34 C.F.R. §§ 300.149, 300.600, and 300.604.</p> <p>2.3 OSEP finds that the State does not ensure that its LEAs are correctly calculating the proportionate share for parentally-placed</p>

MONITORING COMPONENT	FINDINGS SUMMARY
	private school children with disabilities aged three through five for IDEA Section 619 and three through 21 for IDEA Section 611 in accordance with 34 C.F.R. §§ 300.133(a)(1) and (2).
3. Dispute Resolution	<p>3.1 OSEP finds that the State’s model form for filing a State complaint is inconsistent with 34 C.F.R. § 300.153.</p> <p>3.2 OSEP finds that the State does not have a mechanism to ensure that hearing officers contracted by the State meet the minimum qualifications as required under 34 C.F.R. § 300.511(c)(1)(ii)-(iv).</p>
4. Significant Disproportionality	4.1 OSEP finds that the State does not have complete, written policies and procedures in place, consistent with the purposes of IDEA Part B and with IDEA Section 618(d), 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, as required in 34 C.F.R. § 300.173.

OSEP appreciates the State’s continued efforts to improve the implementation of IDEA Part B and the development and implementation of a reasonably designed general supervision system which ensures compliance and improving results for students with disabilities. OSEP notes that having a consistent and transparent system for identifying and correcting noncompliance, particularly noncompliance that impacts the delivery of special education and related services in accordance with individualized education programs (IEPs), and dispute resolutions systems that protect the rights of parents, are essential elements to ensuring improved results for children and youth with disabilities. If you have any questions, please contact your OSEP State Lead.

Sincerely,



Valerie C. Williams

cc: Part B State Director

Enclosure:

DMS Monitoring Report
Appendix

MONITORING AND IMPROVEMENT

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>1.1 Identification of Noncompliance</p> <p>To effectively monitor the implementation of Part B IDEA requirements, the State must have a system that is reasonably designed to ensure that the State can meet its general supervisory responsibility for monitoring the provision of IDEA Part B services as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p> <p>See also 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 (July 24, 2023) (OSEP QA 23-01).</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p><i>When evaluating and examining its LEAs’ compliance with IDEA, the State limits the scope of its monitoring activities to file reviews, which does not meet the IDEA Part B requirements under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</i></p> <p>During interviews with OSEP, State staff confirmed that their monitoring process is restricted to a limited file review and does not include a review of the LEA policies and procedures, interviews with LEA staff, interviews with interested parties, data analysis, dispute resolution, fiscal information, audit findings, or any other documents beyond the IEP and related documentation in a child’s record.</p> <p>The State reported in the introduction of its FFY 2023 State Performance Plan/Annual Performance Report (SPP/APR) the use of tracking systems for compliance monitoring and due process hearings, mediation, State complaints, and other early assistance program activities. However, this process is not described in any of the policies and procedures provided to OSEP, nor mentioned during the discussions with the State about its monitoring processes. The State indicated that while there is a risk assessment (RA) document, it is not used as part of any formal monitoring activities, since the RA is based on information that is “one year behind.”</p> <p>As a result, the State does not currently have a mechanism for determining if services have been provided consistent with the IEP, whether FAPE is being provided, or if the LEAs’ processes for child find and evaluation are consistent with IDEA. In addition, there is no process for reviewing files for</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State does not have a reasonably designed general supervision system to ensure the identification of noncompliance and that each educational program for children with disabilities meets the IDEA Part B requirements under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> Updated policies and procedures, documenting its process for identifying noncompliance. The policies and procedures must ensure that the State’s monitoring process is reasonably designed. <p>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:</p> <ol style="list-style-type: none"> Evidence that the State has policies and procedures in effect and being implemented in compliance with the monitoring and enforcement requirements, as described under the corrective action above. <p>Examples of evidence of implementation, including monitoring beyond the SPP/APR indicators, could include completed</p>

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>students not found eligible under IDEA or other document review.</p> <p>In order to effectively monitor the implementation of Part B of the IDEA, as required by 34 C.F.R. §§ 300.149 and 300.600, the State must monitor the improvement of educational results and functional outcomes for all children with disabilities and ensure compliance with the IDEA, Part B requirements. If, through its due diligence, the State determines that the LEA is out of compliance with an applicable IDEA requirement, the State must issue a written notification of noncompliance (i.e., a finding) to the relevant LEA. This finding must be timely issued, generally within three months of the State exercising due diligence and reaching a conclusion in a reasonable amount of time, that the LEA has violated an IDEA requirement, unless the LEA immediately (i.e., before the State issues a finding) corrects the noncompliance and the State is able to verify the correction. See OSEP QA 23-01, Sections A and B.</p>		<p>monitoring reports, checklists or other tools developed by the State to document monitoring activities, and any letters of findings and documentation to verify the correction of any noncompliance that the State has developed and implemented.</p>
<p>1.2 Correction of Noncompliance</p> <p>To effectively monitor the implementation of Part B IDEA requirements, the State must have a system that is reasonably designed to ensure that the State can meet its general supervisory responsibility for monitoring the provision of IDEA Part B services as required under</p>	<p><i>The State does not ensure correction of LEA noncompliance within the required timeline and limits the scope of the verification of correction activities, which does not meet the IDEA Part B requirements under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</i></p> <p>During interviews with OSEP and included in the State’s monitoring manual, the State describes their process for verifying correction of noncompliance. When verifying the correction of noncompliance, the State allows for an exception which they call a</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and interested parties. Based on this analysis, OSEP finds that:</p> <p>The State does not have a general supervision system that is reasonably designed to verify correction of noncompliance in a timely</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. Updated policies and procedures outlining the State’s process to: <ol style="list-style-type: none"> a. Determine systemic compliance when an LEA does not have sufficient updated data to demonstrate

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p> <p>In exercising its monitoring responsibilities under 34 C.F.R. § 300.600(e), the State 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 written notification of noncompliance. See OSEP QA 23-01, Questions B-10 and B-14.</p> <p>Additionally, the Office of Management and Budget’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance) requires grantees to establish and maintain effective controls that provide a reasonable assurance of compliance with Federal statutes, regulations, and the terms</p>	<p><i>lack of opportunity</i>.² State staff explained that when an LEA is unable to demonstrate ongoing change, based on the absence of records, the LEA submits a letter of <i>lack of opportunity</i>. For example, if the State had identified noncompliance in a small LEA, and found that IEPs did not include the appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills, as required under 34 C.F.R. § 300.320(b)(1), when verifying the correction of this finding, there may not be another student that requires transition goals during the subsequent year. Since there is no updated data to examine, a <i>lack of opportunity</i> exists according to the State’s policies.</p> <p>The State further explained that they do not have a mechanism to verify the <i>lack of opportunity</i> and they, “...take their [LEAs’] word for it,” that there had been no instances during the year to provide evidence of correction.</p> <p>The State also confirmed during interviews with OSEP, that even in an instance where the LEA did not have an opportunity to demonstrate correction, the State did not, as part of their steps to verify correction, examine policies and procedures to determine if they were consistent with IDEA.</p> <p>Finally, the State said that if there was a <i>lack of opportunity</i> according to an LEA, the State would issue a closure letter with no further actions</p>	<p>manner, as required under 34 C.F.R. §§ 300.149 and 300.600 through 300.602.</p> <p>Specifically, OSEP’s review found that:</p> <ol style="list-style-type: none"> a. The State’s policies and procedures for closing findings of noncompliance based upon a <i>lack of opportunity</i> is not consistent with the requirement to ensure correction of all noncompliance; and b. The State’s procedure of allowing LEAs to select files for review of updated data is not consistent with the requirement to ensure correction of all noncompliance. 	<p>compliance; and</p> <ol style="list-style-type: none"> b. Review updated data and obtain information from its LEAs consistent with the requirements in 34 C.F.R. §§ 300.149 and 300.600 through 300.602. <p>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:</p> <ol style="list-style-type: none"> 1. Documentation that the State, at a minimum, examined relevant policies and procedures for LEAs with a <i>lack of opportunity</i> in verifying correction. 2. Documentation that the State, in verifying the correction of noncompliance, selects the updated data to be reviewed in a manner that ensures the data represents the population served within a given LEA.

² The State submitted a letter, dated February 3, 2023, from Ennis School District, noting its LEA’s inability to submit documentation of compliance with a CAP due to a “lack of opportunity.” While the State also submitted documentation of its LEA’s inability to resolve its noncompliance using the term “not having the opportunity,” for consistency and clarity, the term “lack of opportunity” is used throughout this letter.

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<p>and conditions of the Federal award. 2 C.F.R. § 200.303(a). See Appendix for a listing of additional legal requirements.</p>	<p>required.</p> <p>OPI’s practice of closing findings of noncompliance based upon a <i>lack of opportunity</i> is not consistent with the requirement to ensure correction of all noncompliance in a timely manner and OPI’s procedure of allowing LEAs to select files for review of updated data is not consistent with the requirement to ensure correction of all noncompliance.</p> <p>As discussed in OSEP QA 23-01, Question B-14, in situations where an extremely small LEA does not have sufficient updated data to demonstrate systemic compliance (i.e., is correctly implementing the specific regulatory requirements and has achieved 100 percent compliance with the relevant IDEA requirements based on a review of updated data), States should use other evidence of change. In this instance, States could review revised policies, procedures, and practices; documentation of training provided; and changes made to supervision and oversight that demonstrate systems are in place to ensure systemic compliance. Regardless of the size of an LEA, any child-specific noncompliance must be corrected, even if late, including any remedy determined necessary to address a denial of services in accordance with the IEP.</p> <p>Verification of Systemic Compliance</p> <p>OPI employs a 3:1 process for verifying correction of systemic noncompliance. For example, if six files were identified as noncompliant, OPI would ensure that all six instances of the child-specific noncompliance had been corrected, although late, and would request two additional files, from a subsequent time period, to verify correction of the</p>		

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	<p>systemic noncompliance. The State allows the LEA to select the files submitted for the updated data review. OPI staff indicated during the onsite interview that by having the LEA select the files, the State would be able to see the “best and brightest.”</p> <p>Allowing LEAs to self-select their “best and brightest” files for the purpose of verifying correction of noncompliance, in addition to the State policy of reviewing a very small number of files (two files regardless of the LEA child count), and the SEA’s failure to ensure that the files submitted for review are representative of the children with disabilities served, limits the scope of the State’s monitoring activity and impacts the State’s ability to effectively determine whether LEAs have corrected identified noncompliance, and are meeting IDEA Part B requirements.</p> <p>Although IDEA does not specify the type and amount of information the State must review when verifying the correction of noncompliance and ensuring LEA compliance with IDEA requirements, the OMB Uniform Guidance requires grantees to maintain effective controls that provide a reasonable assurance of compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. 2 C.F.R. § 200.303(a). States should ensure that the type and amount of data reviewed when verifying the correction of noncompliance accurately reflects the LEA’s level of compliance. Further, States should ensure that the information reviewed when determining compliance with IDEA requirements is representative of the population served within a given LEA to ensure data validity and reliability.</p>		

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>1.3 Child find and Evaluation</p> <p>FAPE must be made available to all children with disabilities residing in the State between the ages of three and 21, as required by IDEA Section 612(a)(1) and its implementing regulation at 34 C.F.R. § 300.101.</p> <p>Under 34 C.F.R. § 300.301, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation; or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe.</p> <p>Additionally, under IDEA Section 614(b)(6) and 34 C.F.R. § 300.307, a State must adopt, consistent with 34 C.F.R. § 300.309,</p>	<p><i>The State’s child find and evaluation policies, procedures, and practices do not ensure that evaluations of children suspected of having a disability are not delayed or denied the provision of a full and individual evaluation, because of the implementation of an RTI strategy, consistent with 34 C.F.R. §§ 300.111, 300.122, and 300.301. Specifically, in the State’s special education manual, “prereferral” is described as a required general education process to determine if a referral for special education and related services is necessary for the student. The requirement of such a process can delay or deny the individual evaluation of a child suspected of having a disability under 34 C.F.R. § 300.8.³</i></p> <p>During the onsite engagement, State staff confirmed that under Montana’s policies and procedures, the Montana Special Education One Guide (2021) (One Guide), p. 37, the State defines prereferral as:</p> <p style="padding-left: 40px;">a series of academic and/or behavioral interventions used with students struggling in school. These interventions are examined as to their effectiveness and form the basis of additional actions up to and possibly including an evaluation for special education and related services.</p> <p>In addition, the One Guide (2021), p. 37, notes that:</p> <p style="padding-left: 40px;">Prereferral is a required general education process to determine if a referral for special education and related services is necessary for the student.</p> <p>During interviews with OSEP, the State confirmed that, consistent with the State regulations, the</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State has policies, procedures, and practices that are inconsistent with 34 C.F.R. §§ 300.111, 300.122, and 300.301.</p> <p>Specifically, the State’s use of RTI strategies is being used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability under 34 C.F.R. § 300.8.</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. Updated policies and procedures that are consistent with the requirements in 34 C.F.R. §§ 300.111, 300.122, and 300.301. 2. A copy of the SEA’s updated monitoring activities to evaluate LEAs use of RTI and ensuring that the use of RTI strategies or any prereferral processes are not used to delay or deny the provision of a full and individual evaluation of a child suspected of having a disability as required under 34 C.F.R. §§ 300.111, 300.122, and 300.301. 3. A specific written assurance from the State that shows— <ol style="list-style-type: none"> (1) The State will revise its policies and procedures so that RTI

³ See [OSEP Memorandum 11-07 Response to Intervention \(RTI\)](#) (Jan.21, 2011).

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>criteria for determining whether a child has a specific learning disability (SLD) as defined in IDEA Section 602(30) and 34 C.F.R. § 300.8(c)(10). In addition, the criteria adopted by the State:</p> <ol style="list-style-type: none"> 1. Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD; 2. Must permit the use of a process based on the child’s response to scientific, research-based intervention; and 3. May permit the use of other alternative research-based procedures for determining whether a child has an SLD. 34 C.F.R. § 300.307(a). <p>In accordance with 34 C.F.R. § 300.309(c), the</p>	<p>Administrative Rules of Montana (ARM) 10.16.3320,⁴ an LEA is required to engage in the prereferral process before making a referral for a special education evaluation for any suspected disability category. According to the State, the prereferral process must include at least six weeks of RTI strategies and progress results, prior to making a referral for a special education evaluation. The State indicated there could be potential exceptions for parent-initiated referrals but offered no supporting documentation within the State’s policies, procedures, or training to demonstrate LEAs are aware of those exceptions. Additionally, the State advised that even if a disability is evident, completion of the prereferral is still required based on the State’s policies.</p> <p>The State informed OSEP that updates to the One Guide are being made, but the updates did not include the removal of the requirement for prereferral as a required condition of a special education evaluation referral.</p> <p>The State also provided individual LEA procedures for requesting an initial evaluation, all of which contained the prereferral requirement for all special education referrals (parent, LEA, and other sources and any area of suspected disability).</p> <p>The State’s regulation at ARM 10.16.3320(2), requires a request for initial evaluation made by an LEA to:</p>		<p>is not used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability, as soon as possible but in no case later than one year from the date of OSEP’s 2024 DMS report to be consistent with the requirements in 34 C.F.R. §§ 300.111, 300.122, and 300.301;</p> <ol style="list-style-type: none"> (2) The State will issue a memorandum or other directive to all LEAs, parent advocacy groups, and other interested parties advising that the State will be revising its policies and procedures regarding the use of RTI and provide a copy to OSEP; and (3) The State will comply with

⁴ See [ARM 10.16.3320](#) (1) In accordance with 34 C.F.R § 300.301(b) either a parent or a public agency, as defined in 34 C.F.R. § 300.33, may initiate a request for an initial evaluation. (2) A local educational agency shall establish procedures for requesting an initial evaluation which include methods for collecting information to determine whether a comprehensive educational evaluation is necessary, and the types of evaluations warranted. (a) When the request for initial evaluation is made by an LEA, the request must include a statement of the reasons for the request, including documentation of regular education interventions for students enrolled in school, and the signature or electronic signature of the person making the request.

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services (1) if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction as described in 34 C.F.R. § 300.309(b)(1) and (b)(2); and (2) whenever a child is referred for an evaluation.</p> <p>As explained in detail in OSEP Memorandum 11-07, issued on January 21, 2011, the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability under 34 C.F.R. § 300.8.</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p>include a statement of the reasons for the request, including documentation of regular education interventions for students enrolled in school, and the signature or electronic signature of the person making the request.</p> <p>This is further clarified in the State’s One Guide (2021) on page 54:</p> <p><u>Referral Requirements</u></p> <ol style="list-style-type: none"> What do Montana’s regulations require each referral to contain? <ul style="list-style-type: none"> Statement of the reason(s) for referral; Documentation of general education interventions tried and the results; and Signature of the person making the referral. <p>OSEP’s additional review of the referral procedures and sample program narratives for some of the LEAs in the State, including special education cooperatives,⁵ found that children referred by their parents are required to participate in RTI, as a component of the referral process, prior to being able to request a formal evaluation for special education.</p> <p>On the website for one of the cooperatives reviewed, the special education referral process for any student, parent or teacher outlines a prereferral process that must prove unsuccessful before a referral for evaluation is made:</p> <p>Step 1. Prereferral consultations occur with</p>		<p>34 C.F.R. § 300.600(3) throughout the remainder of the FFY 2023 grant period and the entire FFY 2024 grant period.</p> <p>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:</p> <ol style="list-style-type: none"> Evidence of the State’s review of LEA policies, procedures, and guidance which ensures that RTI is not a prerequisite for making a referral to special education. Documentation of the State’s monitoring of its LEAs, and review of student files, specifically for students who were previously in RTI.

⁵ A [cooperative is made up of the school districts](#) within the cooperative boundaries that choose to participate. The cooperative structure allows the school districts to pool the limited resources to employ special education staff that provide services to children on an itinerant basis. The cooperatives are educational service agencies, as defined in 34 C.F.R. § 300.12.

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>teacher or parents to suggest possible instructional/behavioral strategies that might solve the problem without a formal referral.</p> <p>Step 2. If strategies and interventions prove to be unsuccessful, a referral is made for the student to be evaluated for a possible disability.</p> <p>The State’s policies and procedures conflict with the IDEA Part B regulations at 34 C.F.R. § 300.301(b) which allow a parent to request an initial evaluation at any time to determine if a child is a child with a disability. The use of the prereferral process cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 C.F.R. §§ 300.304 through 300.311, to a child suspected of having a disability under 34 C.F.R. § 300.8.</p> <p>In addition, if the LEA suspects a specific disability that would be unlikely to respond to interventions (e.g., physical disabilities and/or significant developmental disabilities), or if at any point during the prereferral and intervention process, the LEA suspects the child may have a disability and need special education and related services, a reasonably designed system would ensure that the State’s policies, procedures, and practices would allow LEAs to determine, on an individual basis, that an evaluation should proceed without going through the prereferral process.</p> <p>Finally, the use of Multi-Tiered System of Supports (MTSS), such as RTI, and other early intervention systems, are important and useful tools for addressing student needs and evaluation of the need for special education and related services, particularly for students suspected of having an SLD.</p>		

Legal Requirements	State Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>However, as clarified in OSEP Memo 11-07 Response to Intervention (RTI) (January 21, 2011):</p> <p>[T]he use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation, pursuant to 34 C.F.R. §§ 300.304-300.311, to a child suspected of having a disability under 34 C.F.R. § 300.8. If the LEA agrees with a parent who refers their child for evaluation that the child may be a child who is eligible for special education and related services, the LEA must evaluate the child. Although the IDEA and its implementing regulations do not prescribe a specific timeframe from referral for evaluation to parental consent, it has been the Department's longstanding policy that the LEA must seek parental consent within a reasonable period of time after the referral for evaluation, if the LEA agrees that an initial evaluation is needed.</p>		

FISCAL MANAGEMENT

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>2.1 Grant Award Notifications Under 2 C.F.R. § 200.332(a), all pass-through entities 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 modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. <i>Id.</i> at 2 C.F.R. § 200.332(a).</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p><i>The State’s Grant Award Notifications (GANs) do not include all of the information required by the OMB Uniform Guidance, consistent with 2 C.F.R. § 200.332(a).</i></p> <p>In the sample GANs provided to OSEP prior to the monitoring visit, OSEP identified the following inconsistencies. The GAN:</p> <ul style="list-style-type: none"> • Did not include the subaward Period of Performance Start and End Date, which must include the Tydings period,⁶ as required under 2 C.F.R. § 200.332(a)(1)(v), and the Name of the Federal awarding agency as required under 2 C.F.R. § 200.332(a)(1)(xi). In addition, the “grant periods” listed on the GANs end September 30, 2023, however, under the Tydings Amendment, the LEA must have access to these funds through the end of September 30, 2024. • Incorrectly identified the grant awards as Research and Development, which the State acknowledged was an error, as none of the subawards conduct Research and Development and is inconsistent with the requirements in 2 C.F.R. § 200.332(a)(1)(xiii). On all six GANs the State noted “yes”, indicating they were for Research and Development. During 	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and interested parties. Based on this analysis, OSEP finds that:</p> <p>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).</p> <p>Specifically, the State inaccurately identified grant awards and omitted pertinent information in its GANs.</p> <p>Subsequent to OSEP’s monitoring visit, the State submitted an amended GAN: Billings 611 and 619 GANs correcting all four noncompliant parts of the GAN. The revised</p>	<p>OSEP acknowledges the State’s amendment and correction of all four noncompliant parts of its GANs. Based on these revisions, OSEP requires 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:</p> <ol style="list-style-type: none"> 1. Examples of revised IDEA GANs for FFY 2024 that include the required information in 2 C.F.R. § 200.332(a), specifically the correct period of performance; the name of the Federal awarding agency; subrecipient grant status as a subaward; and correct identification of whether the award is Research and Development.

⁶ If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated funds, it may obligate remaining funds during a carryover period of one additional fiscal year. 34 C.F.R. § 76.709.

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>OSEP’s Onsite Monitoring Visit on June 28, 2023, OPI Fiscal staff acknowledged that the GANs should have had a “yes” indicating they were subawards, and a “no” indicating that the GANs were not for Research and Development.</p> <ul style="list-style-type: none"> Incorrectly indicated that grants that were subawards, were not subawards, which is inconsistent with 2 C.F.R. § 200.332(a)(1)(xi). 	<p>GANs submitted to OSEP subsequent to the visit reflect compliance with the requirements in 2 C.F.R. § 200.332(a).</p>	
<p>2.2 Subrecipient Monitoring</p> <p>Under the OMB Uniform Guidance, SEAs are responsible for oversight of the operations of IDEA supported activities under 2 C.F.R. § 200.332(d) and 34 C.F.R. §§ 300.149, 300.600, and 300.604. 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. <i>Id.</i> See OSEP QA 23-01 Question A-1.</p> <p>In order to meet its general supervisory responsibilities, the SEA must evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of</p>	<p><i>The State does not have a fiscal monitoring process that meets the fiscal monitoring requirements under IDEA and the OMB Uniform Guidance, consistent with 2 C.F.R. §§ 200.332, 200.339, 200.303, and 34 C.F.R. §§ 300.149, 300.600, and 300.604.</i></p> <p>During OSEP’s interviews with OPI fiscal and program staff, the State explained that the State monitors its LEAs through their grant application process in the State’s E-Grants system. When asked how OPI makes a fiscal finding, the State said OPI reviews reimbursement requests, and that through the review process, OPI could deny reimbursement, ask for supporting documentation on invoices, or send reminders on spending.</p> <p>While the State explained its application and reimbursement processes, staff also confirmed during interviews with OSEP, that OPI did not have a mechanism in place to monitor its subgrantees, or LEAs, to ensure compliance with applicable Federal fiscal requirements, such as the time and effort, procurement,</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>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, 200.339, 200.303, and 34 C.F.R. §§ 300.149, 300.600, and 300.604.</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> Updated policies and procedures for fiscal monitoring consistent with the requirements of IDEA and the OMB Uniform Guidance at 2 C.F.R. §§ 200.332, 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: <ol style="list-style-type: none"> Allowable costs consistent with 2 C.F.R. § 200.403(a)

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>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, and 300.600 and 300.604. See OSEP QA 23-01 Question A-6.</p> <p>Under 2 C.F.R. § 200.303, the SEA is required to establish and maintain effective internal control over its IDEA grant award that provides reasonable assurance that the SEA is managing those awards in compliance with Federal statutes, regulations, and the terms and conditions of those IDEA awards.</p> <p>Further, 2 C.F.R. § 200.339 provides, in part, if a non-Federal entity fails to comply with the U.S. Constitution,</p>	<p>physical inventory of property, use of IDEA Part B funds for comprehensive coordinated early intervening services (CCEIS), the purchase of equipment, and the financial and programmatic record retention requirements.</p> <p>2 C.F.R. § 200.332. Additionally, while State grant management staff review reimbursement requests in relation to the approved budget, OPI was unable to provide evidence that any of the actual expenditures are verified through supporting documentation.</p> <p>In addition, the State did not submit to OSEP any evidence of completed fiscal monitoring reports, letters of findings, corrective action plans, or closeout letters. The State did submit a document called the Summary of IDEA Findings, however this document only referenced audit findings.</p> <p>The State, in collaboration with support from OSEP-funded Technical Assistance Centers, has developed a number of proposed fiscal monitoring procedures and activities in a document called, IDEA Part B Section 611 and 619 (Preschool) Federal Grants: Fiscal Monitoring Procedures Manual for LEAs and Subrecipients.</p> <p>During OSEP’s monitoring, the State explained that OPI plans to implement these new fiscal monitoring procedures and activities in the near future and merge them with the Montana State and Federal Grants Handbook (March 2012).</p>		<p>and (g);</p> <ul style="list-style-type: none"> b. Time and Effort charges for personnel duties consistent with 2 C.F.R. § 200.430(b); c. Records and Information management to ensure fiscal records are maintained in compliance with 2 C.F.R. §§ 200.303(e), 200.334, and 200.336; d. Equipment and inventory of items purchased using Federal IDEA Part B funds consistent with 2 C.F.R. §§ 200.313 and 200.314; and e. The activities carried out in implementing CCEIS under 34 C.F.R. § 300.226. <p>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:</p> <ul style="list-style-type: none"> 1. Evidence that OPI has implemented its fiscal monitoring procedures as

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>Federal statutes, regulations, or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions as described in 2 C.F.R. § 200.208.</p> <p>See Appendix for a listing of additional legal requirements.</p>			<p>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.</p>
<p>2.3 Parentally-placed Private School Children with Disabilities Proportionate Share Calculation</p> <p>Under 34 C.F.R. §§ 300.132 and 300.133(a), the LEAs proportionate share calculation must be based on the total number of children with disabilities who are enrolled in private elementary and secondary schools, including religious schools, located in the LEA, whether or not the children or their parents reside in the LEA. More specifically, each LEA must spend the following amounts on providing special education and related services (including direct</p>	<p><i>For the proportionate share calculations for parentally-placed private school children with disabilities, the State is not ensuring that LEAs are including children aged three through twenty one, and children aged three through five for the respective IDEA Sections 611 and 619 proportionate share calculation.</i></p> <p>During OSEP’s onsite monitoring OPI demonstrated the State’s E-Grants system. OSEP observed during this demonstration that one of the components in the LEA’s online application that was marked for proportionate share of children with disabilities who are enrolled in private elementary and secondary schools, including religious schools, only included children aged five through 21 in its proportionate share calculation for IDEA Section 611, rather than children aged three through 21. Subsequently, the State also shared a screenshot from the State’s E-Grants system</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and interested parties. Based on this analysis, OSEP finds that:</p> <p>The State does not ensure that its LEAs are correctly calculating the proportionate share for parentally-placed private school children with disabilities aged three through five for IDEA Section 619 and three through 21 for IDEA Section 611 in accordance with</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must provide documentation to OSEP that it has required its LEAs to:</p> <ol style="list-style-type: none"> 1. Establish a count of parentally-placed private school children with disabilities that includes children with disabilities aged three through 21, as well as a count of parentally-placed private school children with disabilities aged three through five: Using the best data available and in consultation with private school representatives and

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>services) to parentally-placed private school children with disabilities:</p> <ol style="list-style-type: none"> For children aged three through 21, an amount that is the same proportion of the LEA’s total subgrant under IDEA Section 611(f) as the number of private school children with disabilities aged three through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through 21. For children aged three through five, an amount that is the same proportion of the LEA’s total subgrant under IDEA Section 619(g) as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in private, including religious, elementary schools located in the school district served 	<p>that showed the State only included children aged five in its proportionate share calculation for IDEA Section 619, rather than children aged three through five.</p> <p>IDEA Section 611 provides formula grants to States to make available special education and related services for children with disabilities aged three through 21. To be eligible for these grants, States must make FAPE available to all eligible children with disabilities aged three through 21. Under 34 C.F.R. § 300.133(a)(1) an LEA must spend an amount that is the same proportion of the LEA’s total subgrant under IDEA Section 611(f) as the number of private school children with disabilities aged three through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through 21.</p> <p>IDEA Section 619 provides formula grants to States to make available special education and related services for children with disabilities aged three through five. To be eligible for these grants, States must make FAPE available to all eligible children with disabilities aged three through five. Under 34 C.F.R. § 300.133(a)(2) an LEA must spend an amount that is the same proportion of the LEA’s total subgrant under IDEA Section 619(g) as the number of parentally placed private school children with disabilities aged three through five who are enrolled by their parents in private, including</p>	<p>34 C.F.R. §§ 300.133(a)(1) and (2). Specifically, the State only includes children aged five through 21 in its calculation for proportionate share for IDEA Section 611, rather than children aged three through 21, and only includes children aged five in its calculation for proportionate share for IDEA Section 619, rather than children aged three through five, as required under 34 C.F.R. § 300.133(a).</p>	<p>representatives of parents of parentally-placed private school children with disabilities, each LEA in the State must determine the number of children with disabilities enrolled by their parents in private elementary and secondary schools that are physically located in the LEA. Consistent with State law, children with disabilities who are homeschooled in the LEA for FFYs 2019, 2020, 2021, 2022, and 2023 must be included in this count. The State must also ensure that nonresident children with disabilities who attend private schools located in the LEA for FFYs 2019, 2020, 2021, 2022, and 2023 are included in this count.</p> <ol style="list-style-type: none"> Recalculate the proportionate share: Using the revised child counts established above, each LEA in the State must properly calculate the proportionate share of IDEA Part B funds, including funds from both IDEA Sections 611 and 619

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.</p> <p>Under 34 C.F.R. § 300.130, parentally-placed private school children means children with disabilities enrolled by their parents in private, including religious schools or facilities that meet the definition of elementary school in 34 C.F.R. § 300.13 or secondary school in 34 C.F.R. § 300.36, other than children with disabilities covered under 34 C.F.R. §§ 300.145 through 300.147.</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p>religious, elementary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged three through five.</p>		<p>grants, required for the provision of equitable services under 34 C.F.R. § 300.133 for FFYs 2019, 2020, 2021, 2022, and 2023.</p> <p>3. Determine the amount of State, local, and IDEA Part B funds, including from both IDEA Sections 611 and 619 grants actually expended: Each LEA in the State must determine the amount of State, local, and IDEA Part B funds, including funds from both IDEA Sections 611 and 619 grants that the LEA expended in FFYs 2019, 2020, 2021, 2022, and 2023 to provide special education and related services to parentally-placed private school children with disabilities (including homeschooled children to the extent that it is consistent with State law, as noted above). The amount of State and local funds and the amount of IDEA Part B funds, including funds from both IDEA Sections 611 and 619 grants must be determined</p>

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
			<p>and calculated separately for each fiscal year. The expenditures must be verifiable by the SEA or State and/or local auditors.</p> <p>4. Determine the amount of the shortfall in funds, if any, spent to provide services to parentally-placed private school children with disabilities: By subtracting the result calculated in #2 from the result determined in #3 above, each LEA must identify the amount of the shortfall, if any, in funds spent to provide services to parentally-placed private school children with disabilities. The LEA must perform this calculation separately and include IDEA Part B funds, from both IDEA Sections 611 and 619 grants for FFYs 2019, 2020, 2021, 2022, and 2023.</p> <p>5. Remedy any shortfall by using available State and local funds, and IDEA Part B funds from both IDEA Sections 611 and 619 grants, where available, to</p>

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
			<p>make up the difference: When remedying any shortfall, an LEA may use State and local funds and/or IDEA Part B funds from both IDEA Sections 611 and 619 grants to the extent the LEA has not already used an amount of such funds equal to its required proportionate share for the FFY. In addition, the State has the discretion to use a portion of its IDEA Part B funds from both IDEA Sections 611 and 619 grants reserved for State level activities to support LEAs in remedying any shortfall.</p> <p>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:</p> <ol style="list-style-type: none"> 1. The results of the LEA’s recalculation of the proportionate share (i.e., revised child count data, amount of IDEA Part B funds used in the calculation with evidence that both IDEA Sections 611 and 619 funds were

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
			<p>included, as appropriate, and the amount of proportionate share).</p> <ol style="list-style-type: none"> <li data-bbox="1562 342 1984 773">2. The total amount of expenditures the LEA previously made with State, local, and IDEA Part B funds from both IDEA Sections 611 and 619 grants for FFYs 2019, 2020, 2021, 2022, and 2023 to provide services to parentally-placed private school children with disabilities. <li data-bbox="1562 797 1984 1395">3. Evidence that the LEAs have conducted meaningful and timely consultation with private school representatives and representatives of parents of parentally-placed private school children with disabilities on matters including, but not limited to, discussions of the child find process and the decisions reached concerning the use of any shortfall amount for equitable services.

DISPUTE RESOLUTION

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>3.1 Adoption of State Complaint Procedures</p> <p>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 IDEA Part B or the Part B regulations, including the facts on which the statement is based.</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p><i>The State’s model form for filing a State complaint indicates that families must agree to engage in an informal State complaint process, before the State will begin a formal investigation of the complaint, which is inconsistent with the filing requirements in 34 C.F.R. § 300.153.</i></p> <p>During the interview with the State, OSEP and the OPI staff discussed the State’s informal complaint processes, the Early Assistance Program (EAP), and IEP facilitation, which occur outside of the State’s formal dispute resolution processes. As described by staff, when a complaint is filed, a notice of resolution letter is issued immediately which explains that EAP can assist in resolving the issue within 15 days. Staff further explained that this is a voluntary process, and that if the parent declines, the investigation will proceed. EAP staff further explained that if they do proceed with the informal resolution process but do not resolve the issue, the 60-day timeline for the completion of the State complaint investigation begins on the date the parent originally filed the complaint.</p> <p>OSEP reviewed language with the State specifically, as it relates to the EAP, outlined in the document, IDEA Part B Procedural Safeguards Notice (2020) and the State’s dispute resolution chart entitled, Montana’s IDEA Dispute Resolution Options and the State’s model form. The language in the State’s procedural safeguards and dispute resolution chart describe the EAP as, “informal, voluntary dispute resolution to assist with issues related to IDEA, including technical assistance for IDEA requirements, resolution of written state complaints, and communication between</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and interested parties. Based on this analysis, OSEP finds that:</p> <p>The State’s model form for filing a State complaint is inconsistent with 34 C.F.R. § 300.153.</p> <p>Specifically, the language in the State’s model form for filing a State complaint indicates that families must agree to engage in the State’s informal complaint process before the State conducts a formal investigation of the complaint.</p> <p>In October 2023, during a subsequent review of the State’s procedural safeguards and model form, OSEP found that the State revised both documents to accurately reflect that EAP is a voluntary process.</p>	<p>OSEP acknowledges the State’s revision of its procedural safeguards and model form. Based on these revisions, OSEP requires 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:</p> <ol style="list-style-type: none"> 1. A copy of the memo sent to all LEAs explaining the revised model form and procedural safeguards notice.

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>parties.” The State’s procedural safeguards document, under the heading, State Complaint Procedures, states that the EAP is automatically involved after the filing of a state complaint and that, the EAP has 15 days to resolve the dispute between the parties.⁷</p> <p>In contrast to the State’s procedural safeguards and dispute resolution chart, the language in the model form indicates that the EAP resolution process is mandatory, and the parent or complainant is required to participate in this informal complaint process when filing a State complaint. The form includes the following:</p> <p style="padding-left: 40px;">I understand that before conducting a complete investigation and issuing a decision, OPI will attempt to resolve the problems with the school or facility informally through its Early Assistance Program (which is not a request for mediation) and if that process is not satisfactory to me, I have the right to insist that OPI investigate the situation and issue a formal decision.</p> <p>Nothing in IDEA prevents the State from having an informal complaint resolution system, however, the informal process may not prevent a parent from accessing their due process rights at any time. OSEP discussed with the State that the language embedded in the State’s model form includes a requirement that an informal agreement facilitated by the EAP must be pursued when filing a state complaint and before OPI conducts a formal investigation which is inconsistent with 34 C.F.R. § 300.151.</p> <p>During onsite interviews, the State confirmed that the complainant can decline EAP’s involvement after</p>		

⁷ The EAP informal complaint process is identified in the State’s policies and procedures under *ARM 10.16.3660*.

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>filing a state complaint. However, the State’s model form does not contain language that specifies that when the State complaint is filed, the complainant can decline the EAP’s involvement, and the formal investigation can begin immediately.</p>		
<p>3.2 Impartial Hearing Officer Knowledge</p> <p>Under 34 C.F.R. § 300.511(c)(1)(ii)-(iv), a hearing officer also must: (1) possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; (2) possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and (3) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p><i>The State does not ensure that hearing officers possess knowledge of, and the ability to understand the provisions of IDEA, as well as the knowledge and ability to conduct hearings, and render and write decisions, in accordance with IDEA and other appropriate, standard legal practice as required under 34 C.F.R. § 300.511(c)(1)(ii)-(iv).</i></p> <p>During interviews with OSEP, the State reported that it did not have a formal mechanism to ensure that hearing officers contracted by the State received training on the provisions of the IDEA and did not provide State-specific training on Federal or State regulations pertaining to the IDEA. The State reported that it provided information to hearing officers related to various training opportunities available through the Center for Technical Assistance for Excellence in Special Education, the Center for Appropriate Dispute Resolution in Special Education, and various law conferences and trainings specific to hearing officers. The State also reported that attendance of these trainings is not mandatory. Although the State reported that it received a list of hearing officers that attended the trainings, the State does not ensure that all hearing officers contracted by the State to conduct hearings, attend the trainings.</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and other interested parties. Based on this analysis, OSEP finds that:</p> <p>The State does not have a mechanism to ensure that hearing officers contracted by the State meet the minimum qualifications as required under 34 C.F.R. § 300.511(c)(1)(ii)-(iv), that hearing officers:</p> <ol style="list-style-type: none"> 1) possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; 2) possess the knowledge and ability to conduct 	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP:</p> <ol style="list-style-type: none"> 1. Policies and procedures consistent with 34 C.F.R. § 300.511(c)(1)(ii)-(iv). that demonstrate how the State ensures that the hearing officers used by the State possess knowledge of, and the ability to understand, the provisions of the IDEA Part B, Federal and State regulations pertaining to IDEA Part B, and legal interpretations of the IDEA Part B by Federal and State courts. 2. Policies and procedures that demonstrate that the hearing officers used by the State possess the knowledge and ability to conduct hearings in accordance with

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
		<p>hearings in accordance with appropriate, standard legal practice; and</p> <p>3) possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p>	<p>appropriate, standard legal practice as required under 34 C.F.R. § 300.511(c)(1)(ii)-(iv).</p> <p>3. Policies and procedures that demonstrate how the State ensures that the hearing officers used by the State possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice as required under 34 C.F.R. § 300.511(c)(1)(ii)-(iv).</p> <p>4. 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:</p> <p>1. Documentation and participation logs of annual, or more frequent, trainings the State held with the hearing officers on:</p> <p>a. the provisions of</p>

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
			<p>IDEA Part B as required under 34 C.F.R. § 300.511(c)(1)(ii)-(iv), Federal and State regulations pertaining to IDEA Part B, and legal interpretations of the IDEA Part B by Federal and State courts;</p> <ul style="list-style-type: none"> b. the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and c. the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

SIGNIFICANT DISPROPORTIONALITY

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
<p>4.1 Overidentification and disproportionality</p> <p>Under 34 C.F.R. § 300.173, the State must have in effect, consistent with the purposes IDEA Part B and with IDEA Section 618(d), 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.</p> <p>Under 34 C.F.R. § 300.646(d)(1)(ii), when significant disproportionality has been identified, in implementing CCEIS, an LEA must identify and address the factors contributing to the significant disproportionality.</p> <p>See Appendix for a listing of additional legal requirements.</p>	<p><i>The State has incomplete 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 which is inconsistent with 34 C.F.R. § 300.173 and with the purposes of IDEA Part B and with IDEA Section 618(d), including 34 C.F.R. § 300.646(d)(1)(ii).</i></p> <p>OSEP reviewed the State policies and procedures addressing the implementation of the IDEA significant disproportionality requirements, which included the State’s Significant Disproportionality Data Collection Protocol. This protocol, however, does not include a section addressing the process the SEA uses to ensure that each LEA with significant disproportionality identifies the factors contributing to significant disproportionality in the LEA. OSEP followed up with the State on these policies and procedures during interviews with OPI on June 29, 2023. The State confirmed that it currently did not have a process in place to ensure that LEAs identify and address the factors contributing to significant disproportionality. In addition, when asked about how the State would monitor the expenditure and use of CCEIS funds for LEAs identified with significant disproportionality, the State</p>	<p>OSEP’s analysis is based on the documents and information provided by the State, and interviews with State staff and interested parties. Based on this analysis, OSEP finds that:</p> <p>The State does not have complete, written policies and procedures in place, consistent with the purposes of IDEA Part B and with IDEA Section 618(d) 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, as required in 34 C.F.R. § 300.173.</p> <p>Specifically, the State does not have written policies and procedures consistent with 34 C.F.R. § 300.646(d)(1)(ii) addressing how it ensures that each LEA with significant disproportionality identifies and addresses the</p>	<p>Policies and Procedures—within 90 days of the date of this monitoring report the State must submit to OSEP revised policies and procedures which include:</p> <ol style="list-style-type: none"> 1. The State’s process for ensuring that each LEA identified with significant disproportionality identifies and addresses the factors contributing to the significant disproportionality, as required in 34 C.F.R. § 300.173; and 2. The State’s oversight of the expenditure and use of CCEIS funds by districts identified with significant disproportionality, consistent with 34 C.F.R. § 300.646(d)(1)(ii). <p>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:</p> <ol style="list-style-type: none"> 1. Examples of notifications to LEAs regarding the revised significant disproportionality policies and procedures; 2. Evidence of training to

Legal Requirements	Noncompliant Policy, Procedure or Practice and OSEP Analysis	OSEP Conclusion/Finding	Next Steps/Required Actions
	<p>acknowledged it did not have a process in place.</p> <p>The requirement in 34 C.F.R. § 300.646(d)(1)(ii) is fundamental to the use of funds reserved for CCEIS, and it carries with it a practical limitation: an LEA may use CCEIS funds for training and professional development and behavioral evaluations and supports, but only to the extent that it is doing so to address the factors identified by the LEA as contributing to the significant disproportionality identified by the State. See Question C-3-3 of OSEP’s Question and Answer document, IDEA Part B Regulations-Significant Disproportionality (Equity in IDEA): Essential Questions and Answers (March 8, 2017). While OSEP is aware that the State has not recently identified a district with significant disproportionality under its current definition, States are required to have policies and procedures to ensure that it has a mechanism in place to implement the significant disproportionality requirements once an LEA is identified with significant disproportionality. Without a process in place to identify and address the factors contributing to the significant disproportionality, LEAs will be unable to properly use the CCEIS funds in accordance with 34 C.F.R. § 300.646(d)(1).</p>	<p>factors contributing to the significant disproportionality when implementing the required CCEIS.</p>	<p>relevant State and LEA staff regarding the revised significant disproportionality policies and procedures including the factors contributing to significant disproportionality and the oversight of CCEIS funds; and</p> <p>3. If available, evidence or documentation of the implementation of the revised policies and procedures.</p>

APPENDIX

Monitoring and Improvement Legal Requirements

In order to effectively monitor the implementation of IDEA) Part B, 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 the 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 IDEA Part B, 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 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. 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 OMB Uniform Guidance and must consider enforcement actions against noncompliant subrecipients as required under the OMB 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 IDEA Part B; 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 IDEA Part B 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 IDEA Part B 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 34 C.F.R. § 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), 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 34 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

Under 34 C.F.R. § 300.646, States are required 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 percent 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 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 interested parties, 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. 34 C.F.R. § 300.647(b)(6). If an LEA is identified with significant disproportionality, the State must provide for the annual 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 percent of its IDEA Part B funds to provide CCEIS to identify and address the factors contributing to the significant disproportionality. 34 C.F.R. § 300.646(c) and (d).

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.