

IDEA DISPUTE RESOLUTION: POST 2013

THE CENTER FOR APPROPRIATE DISPUTE RESOLUTION IN
SPECIAL EDUCATION

OCTOBER 28, 2021

PRESENTER:

GBENIMAH SLOPADOE



Reminder

- ▶ *This presentation provides general information and does not represent a complete recitation of the applicable law and policy in these areas. It does not address specific issues of compliance because determinations of compliance depend on specific facts and are made on a case-by-case basis. The language used in these slides is approved for the purposes of this presentation only and should not be used for other purposes.*

Overview of Presentation

- ▶ OSEP MEMO and Q & A on Dispute Resolution
- ▶ Select Policy Letters: IDEA Part B Dispute Resolution Procedures
- ▶ Resources
- ▶ What's Next
- ▶ DMS 2.0: Dispute Resolution

Prior to Dispute Resolution Q & A Release

- ▶ OSEP issued several policy letters and guidance documents spanning as far back as 1979
- ▶ Policy letters and guidance issued prior to 2001
- ▶ Policy letters and guidance issued from 2001 – present,

OSEP MEMO and Q & A on Dispute Resolution

- ▶ OSEP MEMO and Q & A on Dispute Resolution Released
 - OSERS issued this Q & A document to provide parents, parent training and information centers, school personnel, state educational agencies (SEAs), local educational agencies (LEAs), advocacy organizations, and other interested parties with information to facilitate appropriate implementation of the IDEA dispute resolution procedures, including :
 - MEDIATION
 - STATE COMPLAINT PROCEDURES, and
 - DUE PROCESS COMPLAINT AND DUE PROCESS HEARING PROCEDURES
- ▶ Culmination of prior policy letters and guidance documents

▶ IDEA website

- Law and Policy (includes Analysis of Comments and Changes that accompany IDEA final rules)
- Reports (includes OSEP review and analysis of certain States' dispute resolution systems)
- Resources (includes information on Topic Areas such as dispute resolution, model Procedural Safeguards document, monitoring and enforcement, and other IDEA requirements)

▶ Center for Appropriate Dispute Resolution Special Education (CADRE)

- ▶ OSEP's Part B Dispute Resolution Self-Assessment
- ▶ IDEA Data Center
 - Example of support document: Quick References for IDEA Part B Data
- ▶ National Center for Systemic Improvement

Select OSEP Policy Letters (2015-2017)

- ▶ Decisions and findings available to the public – [Letter to Anonymous](#) (February 27, 2017)
- ▶ SEA as a party to due process complaint and hearing: [Letter to Anonymous](#) (January 2, 2017)
- ▶ SEA complaint decisions and due process hearing decisions – timely implementation of required actions: [Letter to Zirkel](#) (August 22, 2016)
- ▶ SEA complaint resolution – requirement to issue a written decision: [Letter to Lipsitt](#) (September 18, 2015)

Select OSEP Policy Letters (2018-2019)

- ▶ Resolution of complaints against the SEA and enforcement of complaint decisions: [Letter to Zirkel](#) (July 3, 2019)
- ▶ SEA complaint procedures – jurisdiction and remedies: [Letter to Zirkel](#) (May 13, 2019)
- ▶ Expedited due process hearings – applying the timeline: [Letter to Fletcher](#) (August 23, 2018)
- ▶ SEA complaint procedures – compensatory services to redress violations: [Letter to Lipsitt](#) (April 19, 2018)

Select OSEP Policy Letters (2020)

- ▶ Mediation and confidentiality pledges: [Letter to Anonymous](#) (July 31, 2020)
- ▶ [Questions and Answers on Part B Dispute Resolution Procedures During COVID-19](#) (June 22, 2020)
- ▶ Use of IDEA Part B funds for due process Hearings: [Letter to Anonymous](#) (June 8, 2020)



▶ Part B Dispute Resolution in COVID-19 Environment Q-&-A Document (June 22, 2020)

- Addresses extension of the 60-day State complaint timeline
- Discusses use of alternative means for conducting mediation sessions, resolution sessions, and due process hearings if consistent with State law

WHAT'S NEXT? 2021 ...

▶ SUMMARY JUDGEMENT QUESTION

- Whether states can use summary judgement to make a final judgement on a parent's claims without a full due process hearing?
- RESPONSE: 34 CFR 300.511(a)

▶ **General.** Whenever a due process complaint is received under § 300.507 or § 300.532, the parents or the LEA involved in the dispute **must have an opportunity for an impartial due process hearing** consistent with the procedures in §§ 300.507, 300.508, and 300.510.

- What happens if both parties stipulate to inclusion of a summary judgement rule?
 - Stay tuned

Contact Information

For more information about IDEA's dispute resolution procedures, please contact:

- Gbenimah Slopadoe: Gbenimah.Slopadoe@ed.gov



CADRE SYMPOSIUM

DMS 2.0 OVERVIEW

DISPUTE RESOLUTION PROTOCOLS

OCTOBER 29, 2021



DMS IT Facilitator



Dr. Kate P. Moran

*DMS Facilitator & Disaster Response Lead
Office of Special Education Programs (OSEP)*

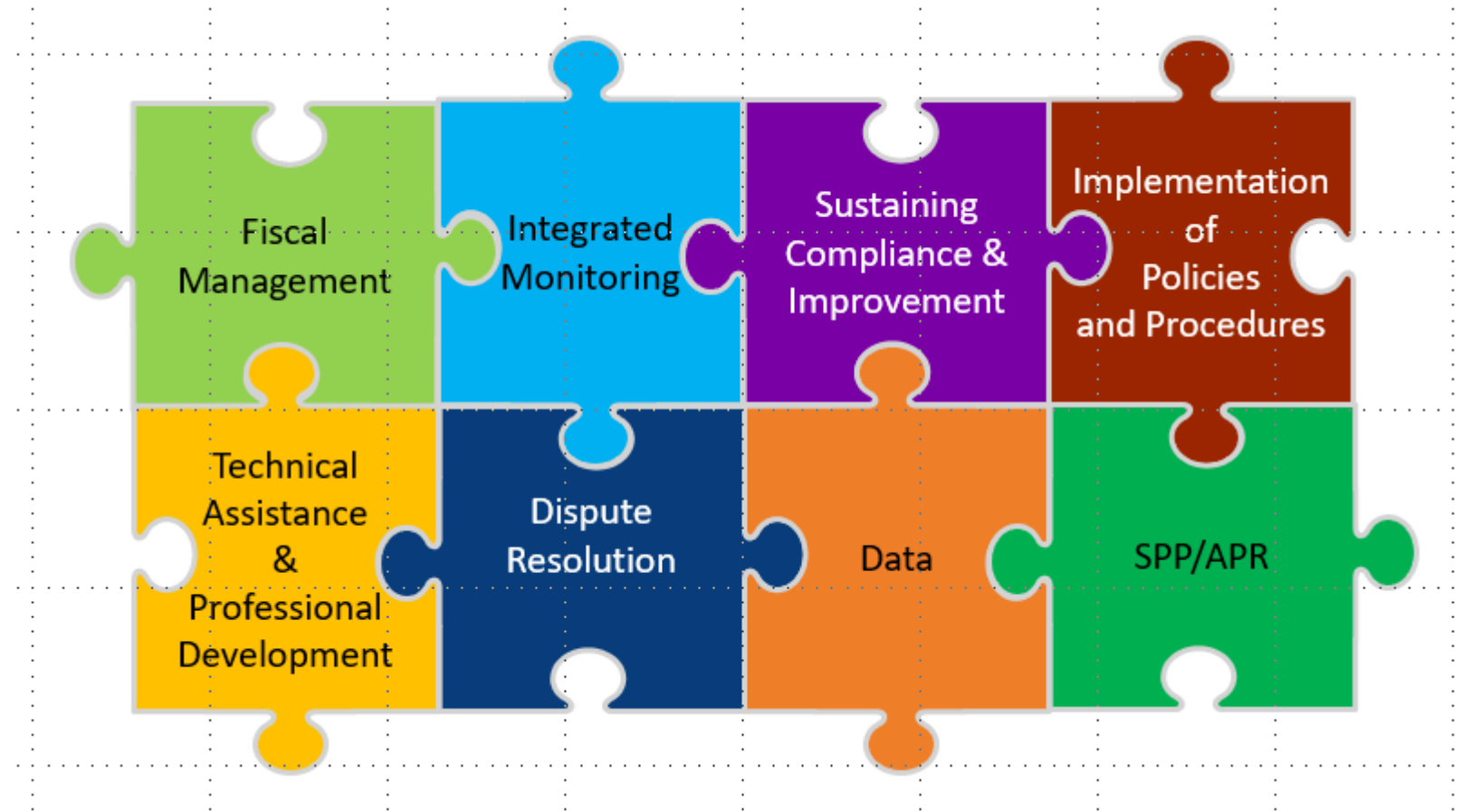
kate.moran@ed.gov

Agenda

- ▶ DMS 2.0 Overview
 - 8 Key Components
 - DMS Framework
 - DMS Timeline and Roadmap
- ▶ Protocol Overview
- ▶ Dispute Resolution Protocols
 - State Complaints
 - Due Process
 - Mediation
- ▶ Questions



8 Key Components



DMS 2.0 Framework

- ▶ The DMS Framework outlines a State system that is:
 - 100% focused on improved outcomes and results for infants, toddlers, children and youth with disabilities and their families,
 - Comprised of defined components,
 - Integrated across components, and
 - Nimble enough to address emerging issues.
- ▶ The DMS Framework outlines how all programs will be monitored on their general supervision responsibilities which include:
 - Improving educational results and functional outcomes for all infants, toddlers, children, and youth with disabilities; and
 - Ensuring that public agencies meet the program requirements under Part B and C of IDEA and exercise their general supervision responsibilities over the programs and activities used to implement IDEA



Timelines: Phases

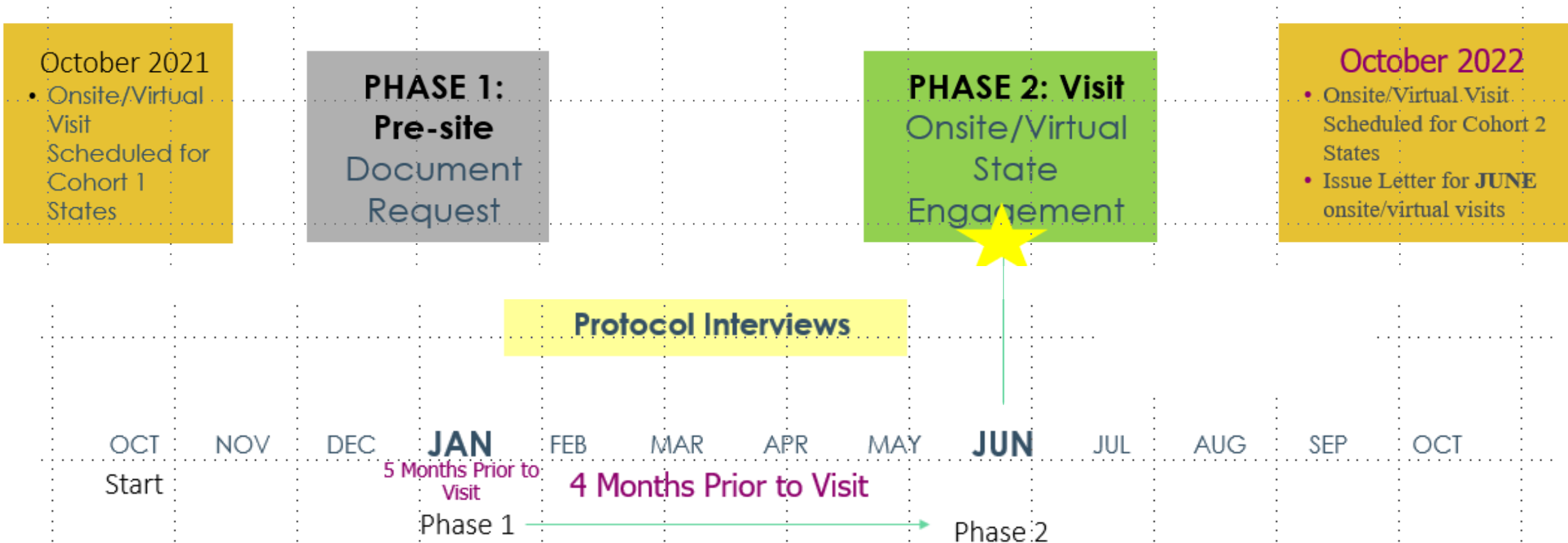
- ▶ OSEP will conduct cyclical monitoring using a 3 phased approach.
- ▶ Phase 1:
 - Document requests will occur 5 months prior to Phase 2 visit
 - Interviews start 4 months prior to Phase 2 visit
- ▶ Phase 2: Visit through issuing of the monitoring report (no more than 4 months)
- ▶ Phase 3: Up to one year after the monitoring report is issued for closing out findings and to provide technical assistance



2.0DMS 2.0 Roadmap

2021-2022

Cohort 1 Example



Phase 1 will occur during the 5 months prior to the visit (one month for document request, 4 months for protocol interviews)

Phase 2 will occur from the onsite/virtual visit through the issuance of the monitoring report (120 days after visit)

Phase 3 will occur up to one year after the issuance of the monitoring report.

Protocol Templates

- ▶ Each of the monitoring protocols have a common structure and format.
- ▶ They are designed to help OSEP gather the information we need for monitoring.
- ▶ The protocols are intended as OSEP's monitoring tool.
- ▶ May also be used, as State's option, to assess a State's own system.
- ▶ <https://sites.ed.gov/idea/grantees/#DMS,DMS-2>

Document Requests

- ▶ The “**Suggested Documents for Review**” section on the protocols will provide a list of documents OSEP will need to complete our review.
- ▶ Most documents will be related to policies and procedures during Phase 1. We are working to limit the volume of document requests to control the burden.
- ▶ For Phase 1, OSEP does not expect any documents with personally identifiable information (PII).
- ▶ In limited circumstances, we may request PII during Phase 2.



Document Request SAMPLE (SC Protocol)

PART B/C DISPUTE RESOLUTION | STATE COMPLAINT

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*

Suggested Documents to Review (not exhaustive):

- *Procedural safeguards notice*
- *Model forms for State complaints, if available, may be found on the State's website*
(NOTE: required only under Part B)
- *Policies and procedures related to the resolution of State complaints*
- *If available on the State website, State Education Agency (S E A)/Lead Agency (L A) State complaint decisions*
- *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*
- *The State's I D E A Section 618 dispute resolution data (at least 3 years' worth of data)*



Relevant Years for Document Requests

- ▶ Phase 1: Policies and procedures for relevant protocols in effect at time of request.
 - If State is in transition, work with your monitoring team on what you should provide
- ▶ Phase 2: Generally ,we will be asking for document samples supporting implementation of an area for three years, current year and two prior years, but there will be variation based on request
 - For example, we will be asking for documentation of the implementation of your monitoring procedures, including programs monitored, protocols used, monitoring findings and documentation of correction.
 - Because we want to follow the process from identification to correction, we may need to go back three years.

Overarching Questions

PART B/C DISPUTE RESOLUTION | STATE - COMPLAINT

(Over-arching Questions (details start on page 5))

A. How does the State ensure that parents and others have access to the State's model State complaint form under IDEA Part B?

[34 C.F.R. §§ 300.153; 300 .151; and 300.509](#)

[Question B-4 from the IDEA Part B Dispute Resolution Q&A \(July 2013\)](#)

B. How does the State ensure that parents and others have access to general information about the State complaint procedures under IDEA Part C?

[34 C.F.R. §§ 303.432; and 303.434](#)

C. What are the States requirements for filing and accepting a State complaint?

[34 C.F.R. § 300.153; 34 C.F.R. § 303.434;](#)

[Questions B-13 and B-15 from the IDEA Part B Dispute Resolution Q&A \(July 2013\)](#)

D. What are the State requirements regarding the scope of allegations and relief that may be included in a State complaint?

[34 C.F.R. § 300.151; 34 C.F.R. § 303.432;](#)

[Questions B- 5 through B- 9 of the IDEA Part B Dispute Resolution Q&A \(July 2013\)](#)

General Information

PART B/C DISPUTE RESOLUTION - STATE COMPLAINT

A. How does the State ensure that parents and others have access to the State's model State complaint form under IDEA Part B?

34 C.F.R. §§ 300.153; 300_151; and 300.509;

Question B-4 from the IDEA Part B Dispute Resolution Q&A (July 2013)

Part B applicable only

General Information

- Under Part B of IDEA, the State must have a model State complaint form.
- The State form's need to include the required elements for filling a State complaint:
 - A statement that a public agency violated a requirement of Part B of IDEA,
 - The facts on which the statement is based,
 - Signature and contact information for the complainant; and
 - If alleging a violation for a specific child, the name and address of the child, name of the child's school, in the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434'(a)(2)), available contact information for the child, and the name of the school the child is attending, a description of the problem, and a proposed resolution.
- States cannot require any party (e.g., parents, or other complainants) to use the model form.
- The State needs to ensure that the model form is publicly available and accessible by widely disseminating it to parents and other stakeholders.



Possible Follow-Up Questions

Possible Follow-up Questions

- How can stakeholders access the model form?
 - Is the model form posted on the State's website?
 - Is the model form included within the Procedural Safeguards notice to parents.
 - Is the model form provided through outreach to stakeholder advocacy groups (e. g.) PTI Centers, P & A Agencies, disability organizations)?
- Is the model form available in multiple languages? If not, what assistance is available to parents in completing the form if English is not their native language?
- If a complainant is unable to read or write and contacts the SEA for information about filing a State complaint, how does the State handle this situation?
- Does the State require its stakeholders to use a model form to file a State complaint?
- Is there any explanation on the State's model form or related guidance that indicates that the, form is required to be used to file a State complaint?
- If the State includes data elements not required by IDEA, does. the State clearly identify those elements as optional?
- If the State includes additional "optional elements," what action does the SEA take, if the complainant does not include the requested information that is optional?

Areas (or Issues) for Follow-Up

Areas (or issues) for Follow-up

- The State does not have a model form.
- The model form does not include all required elements.
- The State reports that it does not resolve a complaint unless it is submitted on the model form.
- The State has disseminated information that indicates the model form must be used to file a State complaint (e.g., brochures, Q & A documents, content on its web site, etc.).
- The State has additional content requirements on its model form (e.g., disability, name of attorney, date of last individualized education program (IEP) Team meeting, any information not required by the regulations} and those additional data elements are not delineated as optional information.
- The State delays resolution of, or dismisses, State complaints based on missing additional content not required by IDEA.



Dispute Resolution Protocols

- ▶ 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)



DMS 2.0 Protocols

<https://sites.ed.gov/idea/grantees/#DMS,DMS-2>

The screenshot shows the IDEA website's navigation menu with 'Resources' circled in red. Below the menu, the 'Resources for Grantees' section is visible, including a sidebar with links to 'U.S. Department of Education', 'Office of Special Education and Rehabilitative Services (OSERS)', 'OSERS Blog', 'Contacts', 'IDEA State Contacts', and 'Building the Legacy: IDEA 2004'. The main content area features sections for 'State Formula Grants' (with 'DMS' circled in red), 'Differentiated Monitoring and Support', and a list of resources. A magnifying glass is positioned over the 'DMS 2.0' link in the 'DMS 2.0' section of the resource list.

[DMS Reports](#)

[Prior Monitoring Systems](#)

[DMS 2.0](#)

General Resources

- [DMS 2.0 Framework with Evidence and Intended Outcomes](#) (PDF)

Fiscal

- [Fiscal Part C SLOR Introduction](#) (PDF)
- [Fiscal Part C SLOR Protocol](#) (Word)
- [Fiscal Part B Subrecipient Monitoring Protocol](#) (PDF)

General Supervision

- [Parts B and C — Integrated Monitoring Protocol](#) (Word)
- [Parts B and C — Sustaining Compliance and Improvement Protocol](#) (Word)
- [Parts B and C — Data and SPP/APR Protocol](#) (Word)

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)





OSEP

OFFICE OF SPECIAL EDUCATION PROGRAMS
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
U.S. DEPARTMENT OF EDUCATION

Home: www.ed.gov/osers/osep

Blog: <https://sites.ed.gov/osers>

Twitter: https://twitter.com/ED_Sped_Rehab

YouTube: www.youtube.com/c/OSERS

