

school districts to ensure information about OSEO and its services is being displayed and distributed, as required by NMSA 1978, Section 28-16C-9. OSEO plans to complete this inspection in FY 23 and provide data regarding school compliance in the next report.

Currently, OSEO collects its case information and data in secured spreadsheets. OSEO continues to work with state agency partners and advocacy organizations to develop a data system to track, collect, and analyze data. OSEO's data collection recommendations are addressed below. OSEO requires additional funding to develop a comprehensive data collection system that will include a public interface such as an online dashboard.

Direct Services

When a student or family contacts OSEO, the intake coordinator walks them through the OSEO intake process. The State Ombud will then typically contact the student or family to discuss their concerns and review their options. If the family wants to work with OSEO, the State Ombud works diligently to ensure that the family's wishes are heard by the schools. OSEO does not speak for students and families, but rather provides support at every juncture to the extent the family desires OSEO's assistance. OSEO works to ensure that both the family and the school are aware of the students' educational rights. OSEO approaches each case with the hope that they can help the family work collaboratively with the school to develop viable solutions. If a collaborative resolution is not possible or desired by the family, OSEO helps the family explore additional options. If a referral to another organization is desired by the family, such as a referral to an educational attorney for legal advice, OSEO ensures a warm handoff so that families are supported through the transition.

During this reporting period, the State Ombud worked directly with students or families in every ombud case providing advocacy services. For the purposes of this report, each case refers to requests for services for a single student. Because of the nature of educational services, a case may reach a resolution but become active again if further issues arise. This report captures all cases worked during the reporting period and the case status of each case in November 2022.

Since its launch on December 1, 2021, OSEO has assisted 191 families in 40 districts, 23 counties, and 9 (of 10) Regional Education Cooperative (REC) regions. Currently, 83 cases have reached a resolution, 77 cases are active, 14 cases have unknown results because the family is no longer working with OSEO, and 17 cases are unresolved for the family at this time. An ombud attended at least one school meeting with the family in 159 cases. OSEO provided resources, information, and strategies to 32 families through telephone calls. OSEO provided support to one family in the completion of a state complaint. OSEO provided support to one family in a mediation. OSEO completed two warm handoffs for families who were seeking legal support.

In every case that reached resolution, the ombud team worked diligently at each school meeting to identify how academic and behavioral concerns are connected to the student's disability, and to craft accommodations that will support the student's academic success.

Of the 83 resolved cases, 29 involved students with autism and 12 involved the “Other Health Impairment” eligibility, including ADHD. OSEO worked closely with families and schools to develop strategies to support the student in both special education and general education settings. OSEO helped families work as a team with schools to help educators understand how impulse and executive functioning issues are impacting the ability of these students to follow directions and rules, and how crucial behavioral supports are for student and teacher success. Most of these cases resulted in specific changes to the student’s individualized education program (IEP) that incorporated positive interventions.

Of OSEO’s 159 cases where an ombud attended a school meeting, 52 cases (33%) across 20 different districts involved behavioral challenges and disciplinary actions. The State Ombud attended a manifestation determination review (MDR) and disciplinary hearing in 9 of the 52 cases, and 16 of the 52 cases involved students with autism. Each of the 52 behavior-related cases required multiple meetings and extensive hours of support from ombuds.

Training and Education

OSEO developed a 16-hour training with 8 modules for volunteer district ombuds. OSEO is in the process of training 11 volunteers, three of whom have left the volunteer training due to family emergency or the need to seek a paying job. Additionally, four individuals have attended the ombud training to better understand the work of OSEO.

OSEO has presented to 26 groups across the state, reaching at least 852 individuals. Presentation topics include OSEO’s purpose and activities, OSEO’s observations during its casework, and the importance of the family vision statement. OSEO is also working with the UNM Center for Development and Disability’s family peer support program, NMSU social worker program, and CASA on training initiatives.

Special Education Concerns & Recommendations

Behavioral Support for Students with Disabilities

A third of OSEO’s cases and more than half of the ombud team’s time involve behavioral challenges and disciplinary actions. Students with disabilities who face behavioral challenges are routinely denied adequate educational services and effective behavioral support, and are instead subjected to severe disciplinary actions, including suspension and removal to an alternative education setting. Schools are failing to understand the connection between the student’s disability and how it affects their ability to succeed in school. For example, many schools lack understanding of autism and its impact on the student’s academic performance and behavior.

OSEO recommends far more extensive training on positive behavioral supports and education on specific disabilities that have significant behavioral components, such as autism, to all school personnel. Behavioral supports training and education should not be limited to teachers, but also required for school administrators, who determine whether students get education services or are subject to disciplinary actions, and support staff, who interact

directly with students on a daily basis. Additionally, OSEO recommends that schools develop far stronger expertise in identifying behavioral needs related to disabilities through IEPs, functional behavior assessments, behavioral intervention plans, and MDRs, while systematically utilizing that expertise to inform school personnel who determine disciplinary actions.

Restraint and Seclusion

It is well documented in New Mexico and across the nation that restraint and seclusion is improperly and disproportionately utilized on students with disabilities. In the 2015-2016 school year, although students with disabilities were only 12% of the student population, they were 71% of the students restrained and 66% of the students secluded, according to data from the Department of Education's Civil Rights Data Collection. Research has consistently shown that the trauma to the students resulting from restraint or seclusion incidents can often be enormous and far-reaching.

The OSEO recommends that New Mexico decision makers take proactive steps to end this deplorably common practice in schools that disproportionately targets students with disabilities and students of color. OSEO urges the following actions: (1) schools, with support and funding from the state, should immediately invest in ongoing, gold-standard prevention and de-escalation training for educators and staff; (2) PED should drastically strengthen and strictly enforce notice and reporting requirements for restraint and seclusion incidents; and (3) the Legislature should pass legislation severely limiting the use of restraint and eliminating the use of seclusion in schools.

Data Collection for Individual Students

OSEO observed a remarkable lack of adequate data collection for individual students across most, if not all, of its cases statewide. Schools are failing to keep adequate records that show what services each student actually received, how the services were provided, and how effective each service was for the student's academic success. As a result, schools are making decisions to remove services without data to support their decisions. IEPs are drafted without baseline data to build appropriate goals, monitor progress, and evaluate the effectiveness of accommodations. The school cannot address student needs or understand the impact of the student's disability on their academic success without adequate data.

Schools also routinely refuse to accept expert medical evaluations that identify well-established disabilities such as Autism Spectrum Disorder and Fetal Alcohol Spectrum. As a result, students with disabilities—especially those whose educational outcomes are directly tied to how early they can receive effective interventions—often wait years for schools to determine their eligibility for special education services, while they languish in the education system and their families helplessly watch their chances for academic success plummet dramatically.

OSEO recommends far more extensive training to school personnel who deal with IEPs on how to collect and analyze baseline data for goal setting and progress monitoring, as well as how to keep adequate records of IEP services provided and how students are

responding to the services. OSEO also recommends that schools expand their evaluation resources to include more expert providers, which will significantly reduce the tremendous backlog schools face for determining eligibility.

Data Collection Across Systems

OSEO has struggled with collecting and analyzing special education data across the state. Perhaps due to lack of trust between school districts, state agencies, advocacy groups, and other educational stakeholders, data sharing has been a particularly difficult hurdle for OSEO to overcome. OSEO seeks to foster an environment of mutual respect and collaboration to improve education services to students with disabilities. To make truly evidence-based policy recommendations, OSEO will need open communication from all educational stakeholders, especially from school districts.

OSEO prefers to partner collaboratively with educational stakeholders and recommends the formation of a working group to determine how to execute effective statewide data collection. DDC plans to request non-recurring funding to support this important initiative.

Use of Online Programs

OSEO has found that many schools across the state are using online programs due to lack of special education personnel. For example, schools are requiring students who are punished for behavior to use programs such as Edgenuity, which were created for students who are performing at grade level and are self-motivated to complete work with little to no teaching support. In these cases, the online programs are being used for students who are performing well below their grade levels, and who often face attention and executive functioning challenges.

OSEO recommends that special education students should not be assigned online courses, unless they are provided highly qualified in-person teacher support. In OSEO cases where online learning is an issue, the ombud team advocates for in-person educational services, if possible, or in-person teacher support for online courses.

Special Education Youth Council

Most special education policy advocacy is driven by parents and families. Students with disabilities often lack a voice or are ignored. DDC's primary objective is to uplift the perspectives of people with disabilities and their lived experience. Especially as students become young adults, they should be supported in developing stronger voices to advocate for their own needs.

OSEO seeks to develop a special education youth council and give students with disabilities a collective platform to direct policy advocacy in New Mexico.

OSEO Program Development

Pursuant to NMSA 1978, Section 28-16C-10, DDC is required to provide adequate legal counsel to OSEO that can provide advice and consultation to OSEO, as needed, to protect the education rights of students, and assist OSEO in the performance of its duties. Although the ombud team has encountered many instances where advice from legal counsel is warranted, OSEO lacks funding to hire outside counsel. While OSEO currently consults with legal services organizations on general discussions about a student's educational rights, these groups cannot represent OSEO or provide advice on specific cases as OSEO's legal counsel. DDC plans to request recurring funding from the Legislature to meet this statutory requirement.

Finally, the tremendous need for OSEO services is rapidly outpacing the capacity of OSEO staff and contractors. Currently, OSEO only has two full-time staff, the State Ombud and the intake coordinator. DDC will hire an outreach coordinator in FY 23; however, only the State Ombud and educational consultants contracted with OSEO are actively working individual cases. OSEO faces significant challenges in recruiting and managing a large enough volunteer workforce to meet the needs of families across the state. OSEO needs funding to hire additional contractors to work cases and requires at least 4 regional coordinators to work cases and manage ombud teams in different areas of the state, especially as schools transition back to in-person meetings with families and IEP teams. DDC has requested funding through the Executive budget recommendation for two regional coordinators to be hired in FY 24 and plans to request funding for another two regional coordinators to be hired in FY 25.