

# **Special Education Legal Updates**

## **State Superintendent's Conference on Special Education and Pupil Services Leadership**

**February 16, 2021**



WISCONSIN DEPARTMENT OF  
**PUBLIC INSTRUCTION**

Carolyn Stanford Taylor, State Superintendent



# Introductions

**Patti Williams, Assistant Director,  
Special Education Team**

- **Oversees the Department of Public Instruction's (DPI) compliance monitoring and dispute resolution options**
- **Part of DPI for over 20 years**



# Dispute Resolution Data for 2020

- **IDEA State Complaints**
- **Total complaints filed: 68**
- **Total complaints accepted as IDEA complaints: 61**
- **Total complaints filed in 2020 with decisions issued: 44**
- **7 open cases pending investigation, mediation, or due process**



# Dispute Resolution Data for 2020

## *Due Process Complaints*

- Total due process hearing requests: 13
- Total due process hearing decisions: 1
- 2 open cases pending resolution, mediation, or decision



# Dispute Resolution Data for 2020

## *Mediations*

- 65 mediations were held in 2020.

## *Facilitated IEP team meetings*

- 28 facilitated IEP team meetings were held in 2020.



# Due Process Decision

## [DPI Case No. LEA 20-007](#)

- Was FAPE denied by shortening the student's day and reducing educational services? **No, district acted in accordance with the mediation agreement.**
- Was placement in a private school a denial of FAPE in the least restrictive environment? **No, student required synchronous learning in a small group environment.**



# IDEA Complaints COVID 19 Circumstances

[20-064](#)

- Unless there is a prohibition through a health order, if an in-person assessment is required in order to conduct the reevaluation, the district must proceed and cannot wait until the district resumes face-to-face instruction.
- In providing in-person instruction or evaluations, the district should consult with local health authorities and follow all health and safety protocols.
- If a student cannot access the virtual instruction due to their *disability related needs*, then the IEP team must determine how to provide in-person instruction in order for the student to receive a free appropriate public education (FAPE).



# IDEA Complaints COVID 19 Circumstances

## 20-055

- IEPs teams must determine a student's need for in-person services based on a team discussion of their unique disability-related needs, which cannot be based on a predetermined schedule.

## 20-058

- A contingency plan must clearly communicate the services the IEP team has determined necessary for FAPE if there is a change in the mode of instruction due to local conditions. The contingency plan must be implemented when those conditions occur.



# IDEA Complaints COVID 19 Circumstances

## [20-061](#)

- An IEP team meeting to consider the results of an IEE should not have been delayed for eight months.

## [20-062](#)

- An evaluation was not properly conducted when the eligibility determination was delayed six months, notwithstanding the state-wide school closure.



# IDEA Complaints

## Manifestation Determinations

### 20-027

- The manifestation determination is a matter of due process designed to respond to a decision regarding a disciplinary change of placement, not to be used as an information gathering tool or as part of IEP team discussions related to other matters.
- Because the IEP team determined that the conduct was a manifestation of the student's disability, the student should have been returned to his original placement without a significant reduction in the school day.



# IDEA Complaints

## Shortened School Days

### 20-014

- When a student's school day is shortened, the student's IEP must include an explanation of why the student's disability-related needs require a shortened day and a plan for the student's return to school for a full day. Before deciding to shorten the student's day, the IEP team must consider if there are other ways to meet the student's needs.

### 20-018

- The student should return to a full school day as soon as they are able, and under most circumstances, a shortened school day should be in place for a limited amount of time.



# IDEA Complaints Evaluations

## 20-015

- Although the parent did not use the exact words “special education evaluation,” evidence, in this case, demonstrates the parent’s intent was clear. As such, the district did not properly respond to the parent’s request for a special education evaluation.



# IDEA Complaints Transportation

## 20-002

- Students with disabilities are entitled to transportation as a related service only if the IEP team has determined that transportation is necessary for the student to benefit from special education.



# IDEA Complaints Progress Reports

## 20-022

- Reports on progress must be provided on the schedule specified in the IEP, must include a statement of progress on each annual goal, and must include data matching the measurement specified in the annual goal.



# OSEP Guidance/Letters

## *COVID19 Specific Guidance*

- [Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak, March 12, 2020](#)
- [Supplemental Fact Sheet, March 21, 2020](#)
- [Part B IDEA Implementation of IDEA Provision of Services in the COVID-19 Environment Question and Answer Document, September 28, 2020](#)



# OSEP Guidance/Letters

## *COVID 19 Specific Guidance*

- [Question and Answer Document on the Implementation of the IDEA Part B Dispute Resolution Procedures in the COVID-19 Environment, June 22, 2020](#)
- [IDEA Part B Procedural Safeguards in the COVID-19 Environment, June 30, 2020](#)



# Procedural Compliance Self-Assessment Updates

- Suspended for the 2020-2021 school year due to the pandemic
- Next year will include [two cohorts](#) (2020-21 and 2021-22 LEAs)
- In the process of developing the PCSA for the third cycle that will begin in the fall of 2022-2023
- We anticipate that the process will remain largely unchanged but there will be new assessment items.



# Cycle 3 PCSA Timelines

- April 30, 2021: Proposed items for the Cycle 3 PCSA will be identified.
- May-June 2021: Proposed items will be shared with stakeholders for feedback.
- October 1, 2021: Finalized items and Standard and Directions document will be posted to DPI's website.
- October 1, 2021: The five year cycle list will be posted to DPI's website. Reporting year for every LEA will be identified.
- Revised E-Course and PCSA reporting application will be open on June 1, 2022.
- Due date for first year of Cycle 3 will be November 1, 2022.



# Proposed Rule Changes/ Impairment Criteria

- Public hearing has been held
  - Creation of Deafblind disability category
  - Revisions/ Deaf and Hard of Hearing
  - Revisions/Blind and Visually Impaired Criteria
  - Revisions/Emotional Behavioral Disability
  - Revisions/Speech or Language Impairment Criteria
- Opportunity for public hearing/submission of electronic feedback
  - Specific Learning Disability
- [DPI's Administrative Rule Page](#)



# State Law Changes: Seclusion and Restraint

2019 Wis. Act 118, effective March 2020.

- [Summary of Changes Document](#)
- [Side-By-Side Comparison Document](#)
- [Reported Data](#)



# DPI Resources

## [COVID-19 Special Education Updates and Resources](#)

- [Question and Answer Document](#)
- [A Guide to Implementing IEPs and Measuring Progress When Moving Between Learning Environments](#)
- [Considerations in Using Facial Coverings During In-Person Instruction](#)
- [Teleservices Considerations for Related Services](#)
- [Additional Services Bulletin No. 20.01/What Families Need to Know](#)
- [Conducting Parent Friendly and Productive Virtual IEP Team Meetings](#)

***Coming Soon: New Bulletin on Conducting Special Education Evaluations***



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ngiyabonga  
teşekkür ederim  
dank je  
gracias  
tapadh leat  
bedankt  
hvala  
mauruuru  
dziękuje  
thank you  
mochchakkeram  
sagolun  
sukriya  
kop khun krap  
go raibh maith agat  
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