

Hot Topics in Special Education Compliance: A Year in Review

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Special Education Compliance Team

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WISCONSIN DEPARTMENT OF
Public Instruction
Jill K. Underly, PhD, State Superintendent

Introductions

Please stand or raise your hand if you have been a director for less than three years.

...4 to 6 years

...7 to 10 years

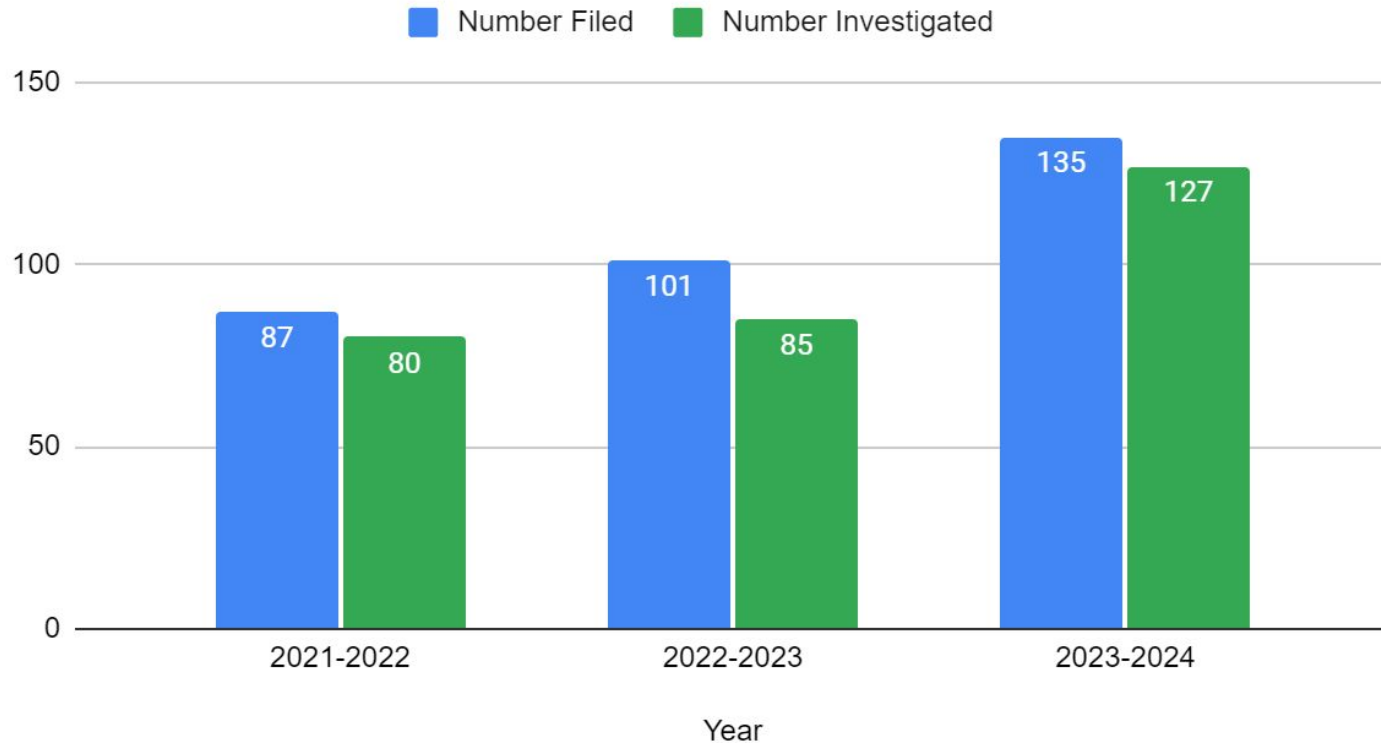
...11 to 15 years

...15 years or more




Dispute Resolution Data

Number Filed and Number Investigated



Dispute Resolution Data for 2023-24

Due Process Hearings

- Total due process hearing requests:
 - Total due process hearing decisions:
 - **XX** open cases pending resolution, mediation, or decision.
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Dispute Resolution Data for 2023-24

Mediations

- 169 mediations were held in 2023-24.

Facilitated IEP team meetings

- 54 Facilitated IEP team meetings were held in 2023-24.
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IDEA Complaint Decisions



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Teacher Licensure

24-031: May a district circumvent the 45-day short-term sub rule by moving teacher assignments and then returning the teacher to the original special ed assignment?

No: the district should pursue a long-term sub license and provide continuing support and oversight

Teacher Licensure

24-030: May a district allow a teacher enrolled in a special education program who holds a license with stipulations to serve as a case manager for a student?

Yes: as long as the district provides continuing support and oversight



Manifest Determination

23-058 May a manifest determination exclude the review of whether student suspensions constitute a pattern?

No: a district must determine whether a student's suspensions constitute a pattern of removals

Manifest Determination

24-035: May a district exclude a student's private mental health provider from a manifest determination meeting?

No: A district must consider inclusion of outside providers who have special knowledge of the student's behavior (counselor, medical provider)

Evaluations

24-085: Does a parent's questions about whether to refer require a district to open a referral?

No: As long as a district provides information about how to refer, a parent asking questions about whether to refer her child does not require a referral

Evaluations

24-004: May a district dismiss a student from special education based on the observations of one teacher?

No: The IEP team must draw upon info from a variety of sources.

Placement & Shortened Day

23-084: May a district shorten a student's school day as part of a disciplinary response?

No, a district may not use a shortened day as disciplinary action.

Placement & Shortened Day

23-073: May a district refuse to increase a student's day for failure to demonstrate "good behavior"?

No, a district may not shorten a student's school day due to behavior, nor may they require "good behavior" to increase a student's day

Placement & Shortened Day

24-074: May a district maintain a student's placement in the resident school even when the parent disagrees?

Yes, as long as the local school can meet the student's needs.

May the school shorten a student's day where the student's family have provided medical documentation and the team is meeting frequently?

Yes, as long as the team is meeting frequently and working toward increasing the student's day not contingent on the student's behavior.

IEP Development & Implementation

23-114: Does a district's denial of providing a driver of the student's same gender, and vehicle type constitute lack of IEP implementation?

No, the district provided the student's specialized transportation. A denial of a parent's request for a specific gender of driver or vehicle type does not mean the specialized transportation has not been provided.

Prior Written Notice

24-006: Does a district's creation of a "communication plan" to streamline communication with parents conflict with providing proper prior written notice?

No, as long as the district is careful to continue providing parents prior written notice when required. Nothing in IDEA prevents districts from creating such a plan as long as it provides parents opportunities to provide information to school and make requests.

Seclusion and Restraint

24-043: May a staff member carry a student to the bus?

No, carrying a student is not an approved restraint. Further, if a student does not present a clear imminent danger to themselves or others, a restraint may not be implemented.

Due Process Cases

24-0008: District incorrectly conducted MD, didn't consider all information and IEP/BIP not properly implemented. Behavior was a manifestation of the student's disability. District did not establish need for interim alternative educational setting. Student allowed to return to school district.

24-0016: District incorrectly conducted MD, did not consider all relevant information. Behavior was a manifestation of the student's disability. Expulsion overturned; student allowed to return to school district.

OSEP Guidance/Letters

[OSEP's Letter to Reilly](#): Whether the assignment of burden of proof to the complainant in an IDEA complaint investigation is consistent with the responsibilities of the SEA under 34 CFR §§300.151- 300.153

...the process is investigatory, it is intended to be **less adversarial**, there is no burden of proof, and the SEA must make an independent determination.

OSEP Guidance/Letters

[Dispute Resolution Memo](#)

How should an SEA resolve a State complaint challenging a public agency's decision regarding the provision or denial of FAPE to a child with a disability?

The SEA may find that the public agency has complied with Part B requirements if the evidence clearly demonstrates that the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the child-specific data.

OSEP Guidance/Letters

Compensatory Education after a child leaves the LEA

“a claim for compensatory education is not rendered moot by an out-of-district move even if that move takes the child out of state.” See *D.F. v. Collingswood Borough Bd. of Educ.*, 694 F.3d 488, 498-499 (3d Cir. 2012) (noting ways to provide compensatory education once a child has moved, including payment to the new school district or a contract with a local provider). See also, *Independent School District No. 284, Wayzata Area Schools, Wayzata, Minnesota v. A.C., by and Through Her Parent, C.C.*, 258 F.3d 769 (8th Cir. 2001) (claim for compensatory education not rendered moot by out-of-district move).

DPI Resources

Functional Behavior Assessment-Coming Soon

[*Seclusion and Restraint*](#)

[*Shortened Day Bulletin*](#)

Where did the communication go wrong?





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