

# Special Education Legal Updates

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**State Superintendent's Conference  
on Special Education and Pupil  
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WISCONSIN DEPARTMENT OF  
**Public Instruction**  
Jill K. Underly, PhD, State Superintendent

# Dispute Resolution Data for 2021

## IDEA State Complaints

- Total complaints filed: 63
- Total complaints accepted as IDEA complaints:  
55
- Total Complaint filed in 2021 with decisions  
issued: 43
- 7 open cases pending investigation or mediation.

# Dispute Resolution Data for 2021

## Due Process Complaints

- Total due process hearing requests: 15
- Total due process hearing decisions: 1
- 2 open cases pending decision.

# Dispute Resolution Data for 2021

## **Mediations**

- **80 mediations were held in 2021.**

## **Facilitated IEP team meetings**

- **38 facilitated IEP team meetings were held in 2021.**

# Due Process Decisions

- [DPI Case No. LEA 20-011](#)
- Was a manifestation determination improperly conducted when the IEP team was unable to reach consensus, and the LEA representative determined that the student's conduct was not a manifestation of his disability?
- No, The lack of consensus among the IEP team members showed that reasonable people could reach different conclusions, and therefore, because the IEP team could not reach consensus, it was up to the LEA representative to make the determination.

# IDEA Complaints Addressing Behavioral Needs

[21-009](#), [21-010](#), [21-014](#), [21-020](#)

- The requirement to consider positive behavioral interventions and supports when a student's behavior affects the student's learning or that of others all IEP teams, regardless of the student's specific disability.
- The requirement does not specify a threshold of the severity of behavior that must be reached.
- The student's IEP must address the behavioral needs identified by the IEP team.

[Inclusive Strategies to Support Behavioral Needs for Students with IEPs.](#)

# IDEA Complaints Placement

## 21-053

- Before shortening the student's day, the IEP team must consider whether special education services, including supplementary aids and supports, could be provided to meet the student's disability related needs to avoid shortening the school day.

## 21-051

- In selecting the least restrictive environment, the IEP team must consider any potential harmful effect on the student or on the quality of services that they need, and the student is not removed from education in age-appropriate regular education classrooms solely because of needed modifications in the general education curriculum.



# IDEA Complaints Placement

## 21-044

- The least restrictive environment requirement is not limited to the classroom. The least restrictive requirement applies to all elements and components of a student's school day, including meals, recess, and other nonacademic and extracurricular activities.

## DPI Bulletin 22-01 Out of District Private Placements

- Placing LEA retains FAPE responsibility.
- State law requirements ([s. 118.305, Wis. Stats.](#)) regarding the use of seclusion and restraint apply



# IDEA Complaints

## Use of Seclusion/Restraint

### 21-049

- **After each instance of seclusion or restraint, the principal or designee must meet with individuals involved in the incident to discuss the events preceding, during and following the use of seclusion or physical restraint, and how to prevent the need for seclusion or physical restraint. This includes discussing factors that may have contributed to the escalation of the student's behaviors, alternatives to physical restraint, and other strategies that the school principal or designee determine are appropriate.**

# IDEA Complaints

## Use of Seclusion/Restraint

### 21-049

- The second time that seclusion or restraint is used with the same school year, the IEP team must meet as soon as possible but no later than 10 school days after the incident.
- The IEP team must review the IEP, and as needed, revise it to ensure it includes appropriate positive behavioral interventions and supports and other strategies to address the behavior of concern based on a functional behavioral assessment of that behavior.
- The use of seclusion and restraint does not need to be included in the student's IEP.

# IDEA Complaints

## Development of IEPs

### 21-021

- An IEP cannot be developed to require the parent to provide the specially designed instruction and to monitor student progress.

### 21-024

- A contingency plan must clearly communicate the services the IEP team has determined the student requires in order to receive FAPE should the district need to change the mode of instruction in response to local conditions and must be implemented as written should the conditions occur.

# IDEA Complaints

## Development and Implementation of IEPs

### 21-055

- In developing the student's IEP, the IEP must consider services that may be required during field trips and other school activities.

### 21-039

- The student's IEP team must address any lack of expected progress toward the annual goals and in the general education curriculum.

### 21-054

- LEAs must have a system in place for tracking missed special education services.

CCR IEP Learning Resources web page: [CCR IEP Learning Resources | Wisconsin Department of Public Instruction](#)

# IDEA Complaints Assistive Technology

## 21-012 and 21-016

- In developing the student's IEP, the IEP team must consider whether the student needs assistive technology devices and services.
- The IEP addressed the student's communication needs, in part, through goals, short term objectives, instruction in communication skills, program modifications and supports for school personnel, and assistive technology use and support.

# IDEA Complaints Assistive Technology

[WCASS Guide on how to provide students with IEPs access to their grade level curriculum through Text to Speech.](#)

- IEP teams should consider whether the student has access to print grade level materials and if not, identify the assistive technology tools or services, such as text to speech, needed to provide access.
- The guide contains information on how to document the need for Accessible Educational Materials (AEM), when to introduce Text to Speech, and sources on where and how to obtain AEM for classroom use.

[Assistive Technology Forward](#): Includes links to sign up to a free Community of Practice, past CoP videos, AT lending center resource map, and other AT resources



# IDEA Complaints Parent Requests

## 21-006

- Parents are equal participants in IEP teams and must be given a meaningful opportunity to participate.
- Document parent concerns in the IEP.
- Consider parent requests.
- If a parent's request is denied, provide prior written notice.

# OSEP Guidance/Letters

- Return to School Roadmaps
  - [Question and Answers on Child Find Requirements](#) (8/24/2021)
  - [Development and Implementation of IEPs](#) (9/30/2021)
- [Letter to Boal](#) (11/15/20)
  - Language development goals may be included in the IEP of a student who is an English learner
  - The IEP team should include members who have the requisite knowledge or special expertise regarding the student's language needs.

# OSEP Guidance/Letters

- [Letter to Frumpkin](#) (September 24, 2021)
  - With few exceptions, an IEP should be implemented without undue delay following the IEP team meeting.
  - Staff must be informed of their specific responsibilities related to implementing the IEP prior to the implementation date.
  - When IDEA does not specify a specific timeline, OSEP interprets that the requirement will be met within a “reasonable period of time.”

# OSEP Guidance/Letters

- [Letter to Tymeson](#) (May 12, 2021)
  - When the IEP team determines a student requires physical education as specially designed instruction to meet the unique needs of a student with a disability, the service is considered special education and not related service.
  - It would be inconsistent with IDEA for the IEP team to base its determination of services necessary to provide FAPE, including specially designed instruction in physical education, on the availability of qualified staff.

# Procedural Compliance Self Assessment Updates

- The new 5-year cycle of the RDA:PCSA will begin in the fall of 2022-23.
- [Cycle List](#)
- [Assessment Items](#)
  - New items related to shortened day requirements, including a new sample.
  - Added new items related to least restrictive environment requirements.
  - Annual goal development requirements not limited to those goals addressing disability related needs affective reading.
- [Directions and Standards](#)
- E-course will be ready by July 1, 2022.
- Application will open on July 1, 2022.

# Criteria Rule Changes

PI 11 Administrative Code-criteria changes all are now in effect.

- Deafblind (new): <https://dpi.wi.gov/sped/program/deafblind>.
- Revised Deaf and Hard of Hearing: <https://dpi.wi.gov/sped/program/vision>
- Revised Blind and Visually Impaired: <https://dpi.wi.gov/sped/program/deaf-hard-of-hearing>.
- Revised Emotional Behavioral Disability: <https://dpi.wi.gov/sped/program/emotional-behavioral-disability>.
- Revised Speech or Language Impairment: <https://dpi.wi.gov/sped/program/speech-language>
- Specific Learning Disability: [Emergency rule](#) permitting the use of significant discrepancy in evaluating private school and home-school students
- Resources: criteria worksheets, summary of changes, webinars and slide decks.



# Proposed Rule Changes

## PI 11 Administrative Code Revisions

- Clearing House Rule [21-095](#): Re-evaluation criteria for orthopedic impairment, traumatic brain injury and significant development delay disabilities categories.
  - Addresses continuing eligibility for special education services and ensures that students who may be making progress and may no longer meet initial criteria are still eligible to receive services if they continue to need specially designed instruction.
- Clearing House Rule [CR 21-102](#): Permanent rule change to the SLD criteria that would permit the use of significant discrepancy in evaluating private school and home school students.
- Both proposed rule changes have been submitted to the legislature.

# Staffing Shortages

- **Attracting and retaining teachers is one of the key challenges we face, and it is not unique to Wisconsin.**
- **As a special education team, we have committed resources to directly address special education staff shortages.**
  - **Engaging with stakeholders to gain insight regarding where along the Career Continuum we should focus, gather what has worked well for LEAs, and what are the greatest challenges.**
- **Some of the initiatives the department has focused on include:**
  - **Addressing the costs surrounding teacher education.**
  - **Supporting educator preparation programs, both traditional and non-traditional, in the state.**
  - **Creating pathways to licensure for people to come into the profession who were prepared outside of education or who want to add on additional licensure areas.**

# DPI Resources and Supports

- [Bulletin 21-01 Special Education Evaluations \(Question and Answer Document\)](#)
- [Bulletin 21-02 The Role of Educational Interpreters for Students who are Deaf, Hard of Hearing or Deafblind \[Replaces Bulletin 13.03\]](#)
- [Comprehensive Special Education Evaluation web page](#)
- [Supporting Neurodiverse Students](#)
- [Regional Special Education Network \(RSN\)](#)

