

# **Special Education Legal Updates**

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

### **September 20, 2023**



WISCONSIN DEPARTMENT OF  
**Public Instruction**

# Introductions

- **Marge Resan, School Administration Consultant, Special Education Team**
- **Complaint coordinator**
- **Have been a part of DPI for over 16 years.**

# Dispute Resolution Data for 2022-23

## *IDEA State Complaints*

- **Total complaints filed: 118**
- **Total complaints accepted as IDEA complaints: 99**
- **Total Complaint filed in 2023 with decisions issued: 45**
- **12 open cases pending investigation, mediation, or due process.**

# Dispute Resolution Data for 2022-23

## *Due Process Hearings*

- Total due process hearing requests: 20
- Total due process hearing decisions: 1
- 5 open cases pending resolution, mediation, or decision.

# Dispute Resolution Data for 2022-23

## *Mediations*

- 148 mediations were held in 2023.

## *Facilitated IEP team meetings*

- 54 Facilitated IEP team meetings were held in 2023.

# Due Process Decision

## DPI Case No. LEA 22-002

- The district did not violate the student's right to FAPE by failing to refer the student for a reevaluation. Parent felt student's identified disability areas did not sufficiently explain all the student's disability related needs, including communication needs.
- The district provided the student appropriate services to address their communication needs.

# IDEA Complaints

## IEP Implementation

### 23-008

- District was able to demonstrate behavioral supports implemented properly during a student's behavioral incident given documentation of incident.

### 23-045

- Services were described in IEP so the amount of time committed to each service and the district's commitment to resources were not clear. All services must be described in the IEP so the level of the district's commitment to resources is clear to the parents and other IEP team members. Specific objective criteria should be used to describe when a particular service will be provided.

### 22-060

- Special education services must be provided by properly licensed special education teachers.
- In this case, one year cross categorical license had expired.

# IDEA Complaints

## Disciplinary Requirements

### 23-011

- District did not count and track disciplinary removals, including in-school removals and de facto suspensions. District did not have a good system to track time student was removed, or if the student received services during removals. Sent student home for two days and recorded as excused absences rather than suspension.

### 23-020

- School contacting parent to pick student up from school. After student removed from school more than 10 cumulative days, district must determine whether subsequent removals constitute a disciplinary change of placement. If yes, then conduct a manifestation determination. District said some pickups were parent choice, but parent did not know keeping student at school was an option.



# IDEA Complaints

## Seclusion and Restraint

### 23-048

- Seclusion or restraint may be used only when student's behavior presents a clear, present, imminent risk to safety of student or others. Student was in hallway, and staff concerned about upcoming passing time. Restraint not appropriate to move student. Physically prevented student from leaving classroom.

### 23-035

- District did not consider a two person transport of a student a restraint. As such did not report. Also utilized restraint during times the student's behavior did not present clear, present, imminent risk. Also used seclusion in a room with fixtures.

### 23-043

- IEP team placed student in private school. Restraint used and not properly reported to parent or district.
- Be sure to keep track of students placed offsite.

# IDEA Complaints

## Disciplinary Change of Placement and Manifestation Determination

[23-008](#)

- Two separate manifestation determinations (MDs) during 2022-23 school year. Behavior was a manifestation in both. District changed student's placement and parent did not agree. One incident, district changed placement as an interim alternative educational setting (IAES), but that did not apply.

23-072

- IDEA's disciplinary protections for students are significant due process rights.
- If the conduct is determined to be a manifestation of the student's disability, the district may not proceed with the proposed disciplinary change of placement. Student must be returned to the placement unless the parent and the district agree to a change of placement.
- In this case, behavior was a manifestation. Parent did not agree to change of placement. District argued delay in implementing new placement meant change wasn't disciplinary.
- If behavior is a manifestation of student's disability and IAES does not apply, but district believes student's behavior substantially likely to result in injury to student or others, district may request expedited due process hearing for IAES, or petition court (Honig injunction)

# IDEA Complaints

## Shortened School Days

### 23-044

- 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.
- The IEP team did not discuss or document explanation of why the student required a shortened day or plan for the student's return to school for a full day, including a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time.
- Consider other options before shortening school day. IEP team did not review the effectiveness of the behavioral supports or determine if additional or different supports were needed.

### 23-038

- The IEP team must develop a plan for the student's return to school for a full day, including a plan to meet more frequently to review student data and determine whether the student is able to return to school full-time.
- Difficulty transitioning, so late start/early release. IEP did not address return to full-time.

# IDEA Complaints Evaluations

[23-045](#)

- **Reevaluations must happen at least once every three years unless the parent and the district agree not necessary. Reevaluation must be conducted if the student's educational or related services needs warrant a reevaluation or if the student's parent or teacher requests a reevaluation.**
- **In this case, parent requested a reevaluation and district did not act on request promptly.**
- **Did not include parent in review of existing data and information.**
- **In general, be careful to watch timelines. Particularly SLD evaluations - don't let them languish.**

# IDEA Complaints

## Extended School Year

23-054

- If a student's parent or any other member of a student's IEP team raises ESY, IEP team must determine whether the student requires it to receive FAPE.
- ESY services provided only if a student's IEP team determines, on an individual basis, that the services are necessary.
- In this case, IEP team documented its review of the student's progress. Based on that information, IEP team reasonably determined the student was unlikely to experience regression or skill recoupment issues.
- Parent asked to reconvene IEP team meeting for ESY. District responded timely, but ultimately parents declined to meet.

# IDEA Complaints

## *Transportation*

### 23-034

- In this case, transportation including an aide not arranged in time. Out-of-district placement.

### 23-068

- Transportation for ESY not arranged for first day of services. District reviewed and revised practices around scheduling for ESY so provided on first day.

## *Progress Reports*

### 22-060

- Reports on progress must be provided on the schedule specified in the IEP, include progress for each annual goal, and must include data matching the measurement specified in the annual goal.
- In this case, the information provided in the progress report did not match the measurement in the goal.

# OSEP Guidance/Letters

## *New OSEP Guidance - SEA General Supervision Responsibilities*

- **A state must not ignore credible allegations of noncompliance made outside its formal monitoring visit cycle;**
- **States must monitor each LEA or EIS program at least once within the six-year cycle of the state's SPP/APR;**
- **States must issue a timely finding of noncompliance, generally within three months of the state's identification of the noncompliance; and**
- **States, LEAs, and EIS programs or providers must correct each individual case of identified noncompliance, rather than a subset.**

# 2023-2024 School Year Procedural Compliance Self Assessment (PCSA) Timelines

- After July 1, ensure staff assigned to review records complete RDA:PCSA Training and Certification eCourse.
- After August 1, review student pools and upload student names needed for samples in RDA:PCSA application in the DPI special education portal.
- Enter LEA actions to ensure current compliance into application. Finalize and submit results November 1.
- Assure student-level corrections are completed using the application by January 15.
- DPI will use a sample of student records created between January 15 and April 15 to verify current compliance on any item the LEA submitted in results as noncompliant.
- LEA will upload applicable list(s) of student names to pull current compliance sample into the application by May 1.
- By October 1 of the following year, DPI verifies LEAs have corrected all student-level errors and have 100% current compliance.



# DPI Resources

- [\*Bulletin 21.01 - Conducting Special Education Evaluations\*](#)
- [\*Bulletin 23.01 - Providing Positive Behavioral Interventions and Supports to Students with Disabilities and Use of Functional Behavioral Assessments\*](#)
- [\*Bulletin 22.01 - Out of District Private Placements\*](#)

**Coming Soon - Revisions to Bulletin 14.03 - Shortened School Day Bulletin**

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 dank je  
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