

# Special Education Legal Updates

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# IDEA State Complaint Data January – October 2022

## IDEA State Complaints

- **Complaints filed: 75**
- **Complaints acknowledged: 73**
- **Decisions issued: 45**
- **Open cases: 18**

# Due Process Hearing Data January – October 2022

## Due Process Complaints

- Due process hearing requests: 9
- Due process hearing decisions: 1
- Due process cases pending decision: 2

# Mediation and IEP Facilitation Data January – October 2022

## Mediations

- Number of mediations requested: 102
- Number of mediations held: 83

## Facilitated IEP team meetings

- Number of facilitated IEP team meetings requested : 40
- Number of facilitated IEP team meetings conducted: 26

# Due Process Decision

## DPI Case No. LEA-22-0002

- The district did not violate the student's right to a free, appropriate public education by not referring him for a reevaluation, and the district provided the student with appropriate related services and supplementary aids and services to meet his communication needs.

# IDEA Complaints Disciplinary Requirements

## 22-039

- **Changing a student's placement to virtual instruction due to behavior subject to disciplinary action is a disciplinary change of placement.**
- **If the conduct is a manifestation of the student's disability and there is an agreement with the parent to change placement, make sure the agreement is documented.**

# IDEA Complaints Disciplinary Requirements

## 22-046, 22-050

- **There must be a direct and substantial relationship between the behavior subject to disciplinary action and the student's disability--cannot be an attenuated association.**
- **Must review all relevant information-make sure recent information is included.**

# Disciplinary Requirements

## Manifestation Determinations

### [OSEP Q&A 22-02](#)

- Sufficient information of alleged code of conduct violation
- Within 10 school days
  - Cannot be postponed until completion of initial evaluation
  - Not required if special education referral is made after the code of conduct violation and deemed to know provisions don't apply (services still must be provided).



# Disciplinary Requirements

Other considerations, [OSEP Q&A 22-02](#)

- Provision of FAPE
- Applies to preschool children 3-5 and public charter schools, including virtual schools
- Does not apply if parent has revoked consent for special education services

# IDEA Complaints Parent Requests

## 22-014

- **Who is a parent? The courts order, as written, does not restrict the father from requesting an Independent Educational Evaluation.**

## 22-042

- **Must respond to a request for an IEP team meeting within a reasonable amount of time.**

**(OSEP Letter to Frumpkin, Sept. 24, 2021)**

# IDEA Complaints LEA Representative

22-054

- An LEA representative must be knowledgeable about and be authorized by the LEA to commit the available resources of the LEA.
- This does not mean that another IEP team meeting can't be rescheduled to allow for gathering of additional information.

# IDEA Complaints Seclusion and Restraint

## 22-025

- **Definition of Seclusion: involuntary confinement, apart from other students, physically prevented from leaving. In this case, as the student was not physically prevented from leaving the break room, it was not considered seclusion.**

# Use of Seclusion/Restraint

## Other reminders

- **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.**

# Use of Seclusion/Restraint

**Other reminders continued.**

- **The use of seclusion and restraint no longer needs be included in the student's IEP.**
- **Debriefing requirement: Meet to discuss after each incident.**
- **Reporting requirements apply to a private school when the student is placed there by an IEP team.**

# OSEP Guidance/Letters

- [Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA Discipline Provisions \(7/19/2022\)](#)
- [OSEP Policy Support 22-01 Positive, Proactive Approaches to Supporting Children with Disabilities : A Guide to Stakeholders \(7/19/2022\)](#)
- [Questions and Answers to Serving Children with Disabilities Placed by Their Parents in Private Schools \(revised Feb. 2022\)](#)

# Procedural Compliance Self Assessment Updates

- The new 5-year cycle of the RDA:PCSA began this school year.
- [Cycle List](#)
- [Assessment Items/Directions and Standards](#)
  - 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.
- [E-course](#)



# Rule Changes

## PI 11 Administrative Code

- **Criteria changes are now in effect.**
- **Specific Learning Disability: Permanent rule-permits the use of significant discrepancy in evaluating private school and home-school students**

# Form Changes

## Form Changes

### Determination and Notice of Placement (P-1 & P-2)

- Will the child attend the school they would attend if nondisabled – new prompt separating options considered from reasons for rejecting.
- New prompt: Is the student removed from the regular education environment for any part of the full school day?
- New prompts separating options considered and reasons rejected when removed from the regular education environment.

# Form Changes

## Form Changes

### **I-4-special factor prompt-assistive technology**

- **Added – Is the student able to access, use, and derive meaning from age or grade level standard printed text?**

# DPI Resources and Supports

- [DPI Bulletin 22-02](#) Assistive Technology-Question and Answer Document
- [DPI Bulletin 22-01](#) Out-of-District Private Placement
- [Regional Special Education Network](#)
- [Comprehensive Special Education Evaluations](#)
- [CCR IEP Learning Resources](#)

# DPI Resources and Supports

- [Inclusive Strategies to Support Behavior Needs for Students with IEPs](#)
- [Updated Disability Category Criteria Identification Guidance](#)
- [Assistive Technology Forward](#)
- [Supporting Neurodiverse Students](#)
- **Accessible Educational Materials Webinars: A four-part webinar series about Accessible Educational Materials (AEM) in Wisconsin. The first session, [AEM in Wisconsin; Are You Ready?](#), is scheduled for November 30 from 4:00pm-5:00pm, and will focus on the requirement for AEM, the I-4 prompt, and resources for IEP teams in determining AEM**

