

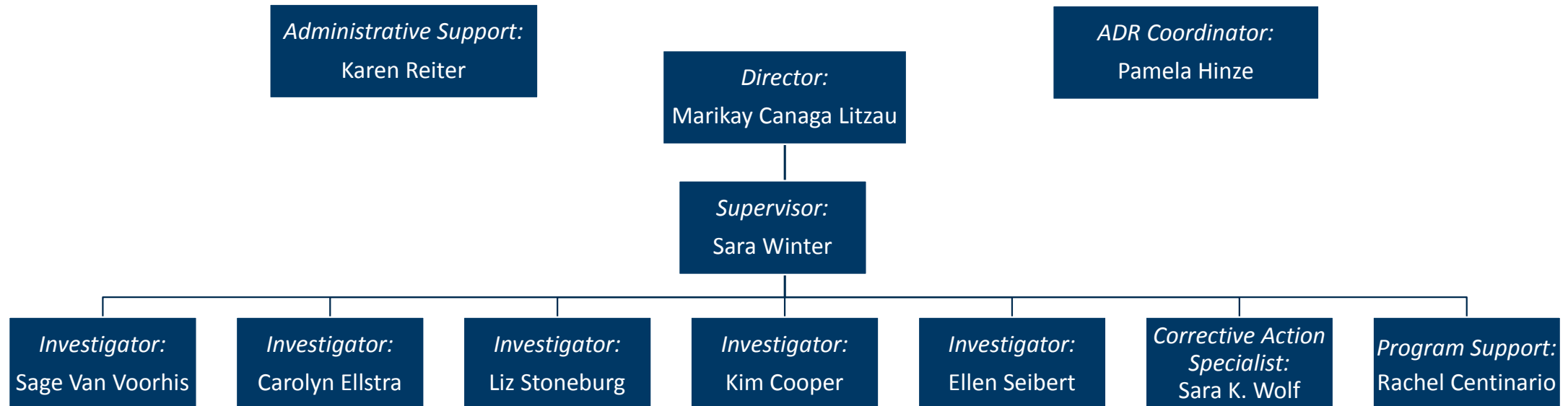


Special Education Complaints and Avoiding Violations

Kimberly Cooper, J.D. | Sara K. Wolf, M.A.

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Meet the Team!



An Overview of the Special Education Complaint Process

- **Who may file a complaint?**

“An organization or individual may file a signed written complaint . . .”

34 C.F.R. § 300.153(a)

- **How long does an investigation take?**

60 days, unless there are “exceptional circumstances” or an agreement to extend for the parties to engage in mediation.

34 C.F.R. § 300.152(a)-(b)

An Overview of the Special Education Complaint Process

- **What about mediation?**

Free mediation is available to help resolve special education disputes! It's voluntary, so both parties must agree to participate. Mediation can be utilized before, during, or after the special education complaint process and can address due process concerns as well as help restore relationships. *34 C.F.R. § 300.506*

- **Can districts resolve complaints without mediation?**

Yes! Informal resolution is encouraged. If a complainant determines that their concerns have been resolved, he or she may withdraw the complaint at any time before a decision is issued.

An Overview of the Special Education Complaint Process

Sample Steps of an Investigation:

- A **complaint** is received, numbered, and assigned to an investigator.
- Investigator determines any investigable issues based on the allegations in the complaint and sends an **issue letter** to the District Superintendent, with a copy to the Special Education Director and the Complainant.
- District has approximately 14 days to provide a **written response** to the investigator, and District sends a copy to the Complainant as permitted by data privacy laws.
- Investigator coordinates with District to arrange a **site visit** and/or **phone interviews**, as necessary.
- Investigator submits complaint decision to an internal review process. MDE, Director of Compliance and Assistance, issues **final written decision** by Day 60.
- Corrective Action Specialist assists District in completing **corrective action**, if any.

34 C.F.R. § 300.152

What happens if violations are found?

In resolving a complaint in which violations are found, MDE must address—

- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- (2) Appropriate future provision of services for all children with disabilities.

34 C.F.R. § 300.151(b)

Sample Corrective Action

District and MDE's Corrective Action Specialist work together to develop a **training plan** for district staff (which may include training provided by MDE).

District and parent meet to discuss **compensatory services**. If no agreement can be reached, both parties submit proposal to MDE.

District revises **policies and procedures** and submits copy of revised policies to MDE's Corrective Action Specialist.

IEP team meets to **review and revise the Student's IEP**.

"No further corrective action is needed."

Most Common Violations

| Top Areas of Noncompliance | Reference |
|--|---|
| Failure to meet child find obligations. | 34 C.F.R. § 300.111; Minn. R. 3525.0750 |
| Failure to provide services in conformity with a student's individualized education program (IEP). | 34 C.F.R. §§ 300.17, 300.101 |
| Failure to provide appropriate progress reports. | 34 C.F.R. §§ 300.17, 300.320(a)(3); Minn. R. 3525.2810 |
| Failure to timely review and revise a student's IEP. | 34 C.F.R. § 300.324(b) |
| Failure to provide proper prior written notice. | 34 C.F.R. § 300.503; Minn. R. 3525.3600 |
| Failure to hold an appropriate conciliation conference. | Minn. Stat. § 125A.091, subd. 7; Minn. R. 3525.3700 |
| Failure to follow statutory standards regarding restrictive procedures. | Minn. Stat. § 125A.0942 |

Flexible Timelines

The following are examples of situations where the timeline may be determined on a case-by-case basis, taking into account what is reasonable under the circumstances:

| District Action | Reference |
|--|--|
| Sending prior written notice proposing a change. | Minn. R. 3525.3600 |
| Revising an IEP after a team meeting. | Minn. R. 3525.3600 |
| Developing an evaluation plan. | Minn. R. 3525.3600; 34 C.F.R. § 300.304 |
| Identifying a student as a child with a disability (“child find”). | 34 C.F.R. § 300.111 |
| Notifying parents of IEP team meetings. | 34 C.F.R. § 300.322 |
| Ensuring that an independent educational evaluation is provided. | 34 C.F.R. § 300.502 |

Specific Timelines

The following are examples of situations where a regulation, statute, or rule prescribes a specific timeline:

| District Action | Timeline | Reference |
|--|---|-------------------------------|
| Completing a special education evaluation and providing the parent with an evaluation report. | 30 school days | Minn. R. 3525.2550, 3525.2710 |
| Providing prior written notice that includes only a refusal. | 14 calendar days | Minn. R. 3525.3600 |
| Waiting for parent's written objection to a proposal. | 14 calendar days | Minn. Stat. § 125A.091 |
| Notifying parent after emergency use of a restrictive procedure; holding an IEP team meeting after use of restrictive procedures on two school days within 30 calendar days. | Two days to notify parent; 10 calendar days to hold meeting | Minn. Stat. § 125A.0942 |
| Transferring education records. | 10 business days | Minn. Stat. § 120A.22 |
| Holding a conciliation conference and providing a conciliation conference memorandum. | 10 calendar days for conference; 5 school days for memorandum | Minn. R. 3525.3700 |

A **child find** complaint typically results from an allegation that a district should have taken steps to identify a student as a child with a disability but instead took no action or unreasonably delayed proposing an evaluation.

See 34 C.F.R. § 300.111; Minn. R. 3525.0750

Reminders:

- If a parent requests an evaluation, the district must respond in a prior written notice either (a) proposing to conduct a special education evaluation (within a reasonable time), or (b) refusing to provide a special education evaluation (within 14 calendar days).

Minn. R. 3525.3600

- If the district does not suspect that a student is a child with a disability in need of special education, an initial evaluation is not required.

34 C.F.R. § 300.111

- Before the district refers a student for a special education evaluation, the district must conduct and document at least two pre-referral interventions. **A special education evaluation team may waive this requirement** when it determines the student's need for the evaluation is urgent.

Minn. Stat. § 125A.56, subd. 1

More Reminders:

- **Disciplinary Protections:** If a parent has expressed concern in writing that their child is in need of special education or has **requested an evaluation**, or if a teacher has expressed specific concerns about the student's pattern of behavior directly to the special education director or other supervisory personnel, then a student who has not been determined to be eligible for special education may assert the IDEA's **disciplinary protections**.

34 C.F.R. § 300.534; see also 34 C.F.R. § 300.530

- A **medical diagnosis** is not required before an evaluation is initiated. The district may be required to obtain a medical assessment of the student to ensure a comprehensive evaluation.

See 34 C.F.R. § 300.304(c)(4); see also 34 C.F.R. § 300.34(a)

Services in Conformity with the IEP

Free appropriate public education (FAPE) means special education and related services that are provided in conformity with an a student's IEP.

34 C.F.R. § 300.17

Important Reminders:

IEPs must be in effect at the beginning of the school year.

34 C.F.R. § 300.323(a)

IEPs must be accessible to each teacher or service provider who is responsible for its implementation, and each teacher and provider must be informed of his or her specific responsibilities related to implementing the IEP.

34 C.F.R. § 300.323(d)

IEPs must include a statement of the student's need for and the specific responsibilities of a paraprofessional.

Minn. R. 3525.2810, subp. 1(A)(10)

If any of the special education and related services, supplementary aids and services, program modifications or supports may be provided under certain circumstances, the circumstances should be clearly documented.

Example: Instead of providing for “sensory breaks as needed,” the IEP could state, “Student will be asked to walk with staff out of the classroom for a sensory break when he begins verbalizing loudly and distracting classmates.”

See 34 C.F.R. §§ 300.320 and 300.323

Services in Conformity with the IEP

Other Reminders:

- ❑ IEPs may be amended without an IEP team meeting if (i) parents and district agree to develop a written document to amend or modify the student's current IEP, and (ii) the IEP team is informed of changes to the IEP.

34 C.F.R. § 300.324(a)(4)

- ❑ Consider avoiding IEP services or accommodations that are not necessary to provide FAPE and that may be extremely difficult to provide.
- ❑ Consider clarifying in IEPs whether and how services will be rescheduled if a student or staff member is absent.

Progress Reporting

- ❑ The IEP must include a description of **how the child’s progress toward the annual goals will be measured.**

34 C.F.R. § 300.320(a)(3)(i); Minn. R. 3525.2810, subp. 1(A)(9)

- ❑ Typically, the description of how progress will be measured is documented within IEP goals and objectives using an “as measured by” phrase.

| Sample Measurement Tool | Sample IEP Statement |
|-------------------------------|--|
| Observation | “as measured by systematic observation and notes by special education staff.” |
| District Assessment | “as measured by NWEA MAP testing results.” |
| Curriculum-Based Measurements | “as measured by 3rd grade AIMS Web maze reading passages interpreted by special education staff.” |
| Student Work Samples | “as measured by Student’s self-completed daily planner reviewed by the paraprofessional” <i>or</i> “as measured by accuracy rates on math calculation worksheets completed in general education.” |

Statement in the IEP:

- ❑ The IEP must include a statement of **when** periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.

34 C.F.R. § 300.320(a)(3)(ii); Minn. R. 3525.2810, subp. 1(A)(9)

- ❑ The IEP must include a statement of **how** the student's parents will be regularly informed by such means as periodic report cards, at least as often as parents are informed of their nondisabled student's progress, of the student's progress toward the annual goals.

Minn. R. 3525.2810, subp. 1(A)(9)

Example: "Kylee's progress toward her annual goals will be reported to her parents four times during the IEP year by three written reports and one oral report shared at an IEP team meeting."

Information in the Progress Report:

- ❑ The student's progress toward the annual goals must be reported in **measurable terms**.
- ❑ The **extent** to which progress is sufficient to enable the student to achieve the goals by the end of the year must be reported.

Minn. R. 3525.2810, subp. 1(A)(9)

Example:

Annual Goal: Jack will increase his production of /l/, l-blends, /s/, and s-blends in all word positions during oral reading tasks from **50% accuracy to 80% accuracy over four consecutive trials**, as measured by observations by the speech-language pathologist.

- ✓ **Adequate Progress:** During oral reading tasks, Jack produces /l/ and l-blends with 60% accuracy over four consecutive trials. He produces /s/ and s-blends at a 55% accuracy over four consecutive trials. The speech-language pathologist notes that when observed during informal conversation with peers, Jack makes fewer errors in producing these sounds.

What circumstances require IEP teams to review and revise a student's IEP?

Each district must ensure that the IEP team revises the student's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved, and revises the IEP, as appropriate to address:

- Any lack of expected progress toward the annual goals or in the general education curriculum;
- The results of a reevaluation;
- Information about the student provided to, or by, the parents;
- The student's anticipated needs; or
- Other matters.

34 C.F.R. § 300.324(b); Minn. R. 3525.2810, subp. 3

The IEP team must, in the case of a student whose **behavior** impedes the student's learning or that of others, **consider the use of positive behavioral interventions and supports**, and other strategies to address that behavior.

34 C.F.R. § 300.324(a)(2)(i)

Prior

Provided before the action takes place

- Given to parents at least 14 calendar days in advance of proposed action or within 14 days of parental request.

Written

In writing

- In understandable language and written in the native language of parents.

Notice

Describes decisions and rationale

- Includes proposals *and* refusals and fulfills all PWN content requirements.

What circumstances require prior written notice (PWN)?

- ❑ A prior written notice is required whenever the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

34 C.F.R. § 300.503(a)(1)-(2)

“When in doubt, send it out!”

Sometimes Overlooked Circumstances Requiring PWN:

- When refusing a parent’s request.
- Before graduation or discontinuation of services.
- Following revocation of parental consent for services.
- After evaluation determining student is not eligible for special education.

What are the timelines for providing PWN?

- The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation.
- If the notice only includes a refusal of a request, it **must** be served on the parent within 14 calendar days of the date the request was made.

Minn. R. 3525.3600

If the district needs more than 14 days to respond to a parent's request, consider providing prior written notice within 14 days refusing to immediately grant the parent's request and explaining the delay.

Prior Written Notice

Content Reminders:

- ❑ Clearly and specifically describe action proposed or refused. (**Example:** Identify changes made to revised IEP instead of simply attaching IEP; respond directly to parental requests.)

34 C.F.R. § 300.503(b)(1)

- ❑ Describe other options considered and why rejected.

34 C.F.R. § 300.503(b)(6)

- ❑ The notice must include a description of other factors that are relevant to the agency's proposal or refusal. (This section may be utilized to document parent input.)

34 C.F.R. § 300.503(b)(7)

Conciliation Conferences

- ❑ When a parent objects to a proposal or refusal contained in a prior written notice, the district must hold a **conciliation conference** with the parent and appropriate district staff **within ten calendar days** of receiving the objection.
- ❑ Within **five school days** after the final conciliation conference, the district must prepare and provide to the parent a **conciliation conference memorandum** that describes the district's final proposed offer of service.

Minn. Stat. § 125A.091, subd. 7

- ❑ **If the parent refuses** efforts by the district to conciliate the dispute with the district, the district is deemed to have satisfied its requirement to offer a conciliation conference.

Minn. R. 3525.3700, subp. 1

Restrictive Procedures

Reminders:

- Ensure the district’s restrictive procedures plan is publicly accessible, up to date, and consistent with state statutes.
See Minn. Stat. § 125A.0942, subd. 1

- The definition of the restrictive procedure referred to as physical holding states that “physical holding does not mean physical contact that . . . is needed to physically escort a child **when the child does not resist or the child's resistance is minimal.**”
Minn. Stat. § 125A.0941(c)(4)

- At the IEP team meeting held within 10 calendar days of the use of restrictive procedures on two separate calendar days within 30 calendar days, the IEP team must:
 - (1) conduct or review a functional behavioral analysis,
 - (2) review data,
 - (3) consider developing additional or revised positive behavioral interventions and supports,
 - (4) consider actions to reduce the use of restrictive procedures, **and**
 - (5) modify the individualized education program or behavior intervention plan as appropriate.*Minn. Stat. § 125A.0942, subd. 2(c)*

Reminders:

- Be prepared to determine and provide **alternative educational services** during a disciplinary change in placement (student suspended for more than five consecutive school days or a pattern of ten or more cumulative school days).
Minn. Stat. § 121A.43; see also 34 C.F.R. §§ 300.530, 300.536.
- Within 10 school days of a disciplinary change in placement, a **manifestation determination** must be made. If the student's conduct is determined to be caused by, or had a direct substantial relationship to, the student's disability, *or* was the direct result of the school's failure to implement the IEP, then the IEP team must either **conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP)** or review and modify an existing BIP to address the behavior.
34 C.F.R. § 300.530(e)
- If the conduct was the direct result of the school's failure to implement the IEP, the school must also take immediate steps to remedy the deficiency.
34 C.F.R. § 300.530(e)

Reminders:

- At least annually, the IEP team must determine whether the student needs **extended school year (ESY) services** during breaks in instruction and must include those services in the Student's IEP.
Minn. R. 3525.0755; see also 34 C.F.R. § 300.106 and § 300.320(a)(4)
- **When determining a student's educational placement**, consider a continuum of alternative placements and select the least restrictive environment.
34 C.F.R. §§ 300.114-300.116
- If a parent disagrees with an evaluation and requests an **independent educational evaluation (IEE)** at public expense, the district must, without unnecessary delay, either (a) request a due process hearing to show that its evaluation is appropriate, or (b) ensure that an IEE is provided at public expense.
34 C.F.R. § 300.502(b)
- The district's student bullying policy must, where appropriate, allow the student's IEP or section 504 plan to **address the skills and proficiencies the student needs to respond to or not engage in bullying**.
Minn. Stat. § 121A.031, subd. 4(a)(8)

Thank you!

Dispute Resolution Team

mde.compliance-assistance@state.mn.us

651-582-8689