

HELP!
It's My First Complaint!

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MDE Complaint Process
Beginning to End

Complaint

- **Who can file?**
 - Anyone (parent, individual, or organization)
- **Who is it about?**
 - Individual student or group of students
- **What must it allege?**
 - A SD has violated state or federal requirements related to special education
- **When must violation(s) have occurred?**
 - Within the last calendar year

Complaint continued

- **What information must a complaint include?**
 - Statement that SD has not followed a requirement of special education law
 - Facts supporting that statement
 - Signature and contact information of complainant
- **If the complaint is about a specific child, it must also include:**
 - Child's name and address (or contact information if homeless)
 - Name of child's school
 - Description of the problem (including underlying facts)
 - Complainant's idea(s) on how to solve the problem

Receipt of Complaint

- MDE and SD receive copy of written complaint from complainant
- MDE assigns Investigator
- Investigator talks to complainant about claims, facts, and issues to be investigated
- Investigator contacts SD to inform it of complaint and determine if informal resolution may be appropriate

Beginning of Investigation

- MDE sends letter to SD summarizing issues in complaint, identifying relevant statutes, establishing timeline, and requesting documents
 - SD may request extension of time for response from MDE
 - Confirm any requested extension in writing

Responding to Complaint

- SD has opportunity to submit written response and provide relevant documents to MDE Investigator
- Response should address all underlying facts relevant to issue(s) raised in Complaint
 - For example, if parent claims SD never sent PWN proposing new IEP, SD should not simply state it provided PWN. Instead, address how it was sent, when it was sent, who sent it, whether conversations with parent reveal parent received it, etc.

Responding to Complaint

- Ensure the response sticks to the issues raised in the Complaint.
- Talk to ALL relevant staff:
 - Written response needs to be consistent with what staff will say if interviewed by MDE
 - Identifies potential problems so they can be addressed in response
- Review all documents, including emails, on the relevant events

Responding to Complaint

- If you discover the SD made a procedural error, it may be best to acknowledge it and propose corrective action:
 - If already been addressed, explain what steps the SD took and that SD believes this was sufficient to address the issue
 - Can consult with Investigator (who may refer you to Corrective Action Specialist) about appropriate corrective action or informal resolution

Investigation

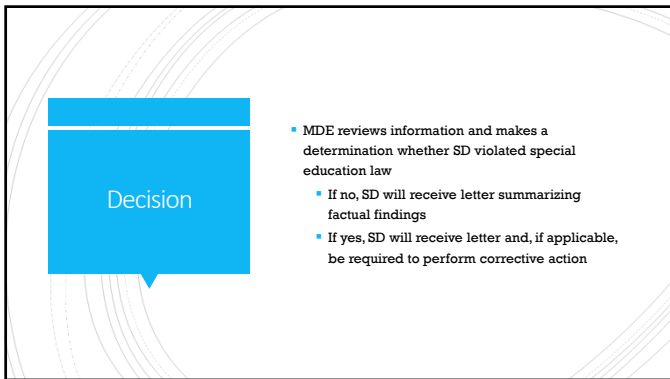
- Investigator may request a site visit, additional documents, and/or interviews (telephone or in person) with relevant staff
- Recently, some investigators have been requesting to schedule interviews *before* the response is provided
 - Avoid this if possible
 - Submitting the response gives the SD the opportunity to describe the facts in the best light and make sure all witnesses are on the same page before interviews

Preparing for Interviews

- Have all staff who will be interviewed review the Complaint Response, IEP, and other relevant documents provided to MDE
- Explain purpose of interviews
- Remind witnesses to explain only what they know, rather than guessing

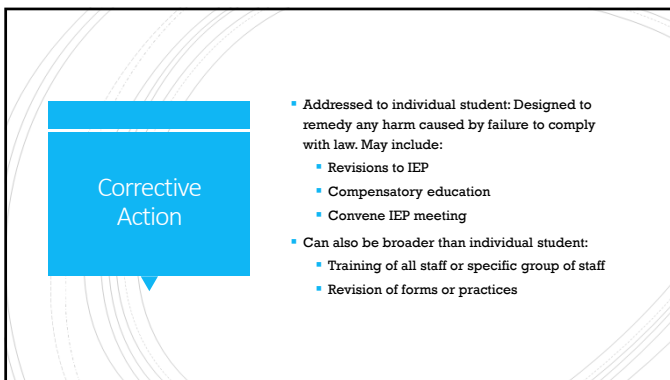
Interviews

- Plan to have one person (director, administrator, or similar) sit in on all interviews
 - Investigator may not ask multiple witnesses the same question, so important to have someone who can see big picture
- If witness needs a document in order to answer a question, they should say so



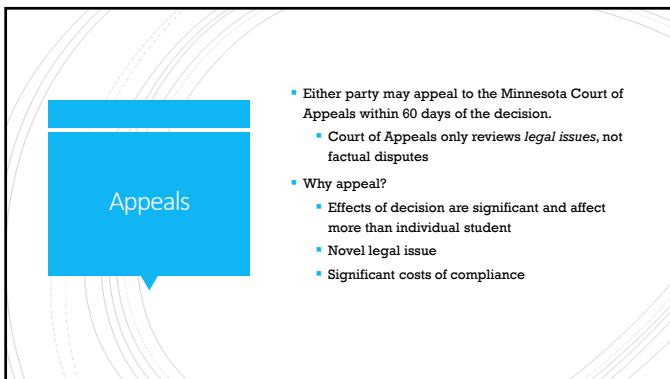
Decision

- MDE reviews information and makes a determination whether SD violated special education law
 - If no, SD will receive letter summarizing factual findings
 - If yes, SD will receive letter and, if applicable, be required to perform corrective action



Corrective Action

- Addressed to individual student: Designed to remedy any harm caused by failure to comply with law. May include:
 - Revisions to IEP
 - Compensatory education
 - Convene IEP meeting
- Can also be broader than individual student:
 - Training of all staff or specific group of staff
 - Revision of forms or practices



Appeals

- Either party may appeal to the Minnesota Court of Appeals within 60 days of the decision.
 - Court of Appeals only reviews *legal issues*, not factual disputes
- Why appeal?
 - Effects of decision are significant and affect more than individual student
 - Novel legal issue
 - Significant costs of compliance

Should we hire an attorney?

- Contact the SD's insurer upon receipt of a complaint. Insurance may cover the cost of defense.
- Without insurance coverage, districts may still want an attorney involved if a complaint includes:
 - Areas of special education law that have not been decided before
 - High costs of compliance if complainant receives requested relief
 - Potential for additional complaints/ ongoing disputes with same complainant

Can a due process hearing be brought over the same issues?

- Yes, a due process hearing can be requested, even if it involves the same issues as an MDE complaint.
 - IHO may consider complaint decision "persuasive," but is not required to follow it
- A second complaint about the same issue (unless it is ongoing or a new instance) cannot be made
 - Example: Parent who thinks child requires a specific service could file a complaint each time new IEP is proposed without that service.

Alternative Dispute Resolution (ADR)

What options are available for ADR?

- MDE offers no-cost mediation and facilitated IEP meetings
- Parties could pursue private mediation at their own expense
- Parties can resolve on their own

Why choose ADR?

- Parties both agree to the outcome, which means MDE cannot force a result the SD does not like or agree with
- Complaint timelines are suspended during time parties are pursuing ADR

When is ADR useful?

- There is room to compromise (e.g. parent wants identified service for less than team thinks necessary)
- Reaching agreement is limited by difficult relationships
- Parent has unrealistic expectations and a neutral party might help them realize that
- Parent agrees with team at meeting, but later changes their mind

When is ADR likely not useful?

- There is no middle ground (e.g. parent wants identified service, team believes it is unnecessary)
- Prior ADR attempts have been unsuccessful
- Parent expects SD to do something that is not required by law
- Parent is stuck on revisiting historical (perceived) wrongs, rather than willing to move forward

What is mediation?

- Mediation involves a neutral facilitator helping the parties work toward common ground and a mutually-agreed outcome.
- If successful, parties voluntarily enter into written agreement that is binding on both parties.

Does mediation affect the complaint outcome?

- No, if mediation is unsuccessful, the MDE does not take that into consideration in making its decision
- "Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any [court]." 34 C.F.R. 300.506(b)(8).

What is a facilitated IEP meeting?

- An impartial facilitator helps the parties draft/ revise an IEP
- Not subject to same confidentiality provisions as mediation
