Trends in Formal Complaints

SELDA
February 21, 2023
Greetings!

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Learning Targets

• I can discuss the current trends in the dispute resolution process of formal complaints.

• I can discuss some Individuals with Disabilities Education Act (IDEA) issues that are frequently raised in formal complaints.

• I know where to locate some state and federal resources to assist in analyzing certain special education issues.
Formal Complaint Trends

• Number of complaints filed are back at pre-pandemic levels
• More complaints filed by current school staff
• More complaints filed in districts who have not historically had complaints
• More complaints filed on behalf of more than one student (systemic)
Formal Complaint Findings
FY20 Findings of Non-Compliance in Formal Complaints (100 Findings against 21 districts)

- Implementation of individualized education program (IEP) (21)
- Development, review, and revision of IEP (16)
- Free, Appropriate Public Education (14)
- Evaluations and Reevaluations (6)
  - Parent Participation (6)
  - Personnel Qualifications (4)
  - IEP Team (4)
  - Access Rights (4)
  - Least Restrictive Environment (3)
  - Discipline Procedures (3)
- Child Find (3)
- Prior Written Notice (3)
- Mediation agreement (3)
- Special Education (2)
- When IEPs must be in effect (2)
- Extended School Year (2)
- Assistive Technology Services (1)
- Transition Services (1)
- State Monitoring (1)
- Class Size (1)
FY21 Findings of Non-Compliance in Formal Complaints (68 Findings against 18 districts)

- Implementation of IEP (13)
- Development, review, and revision of IEP (12)
- Evaluations and Reevaluations (10)
- Free, Appropriate Public Education (8)
- Child Find (6)
- Prior Notice by public agency (5)
- Least Restrictive Environment (4)
- Parent Participation (3)
- Access Rights (3)
- Parental Consent (1)
- IEP Team (1)
- Procedural Safeguards Notice (2)
FY22 Findings of Non-Compliance in Formal Complaints (121 Findings against 28 districts)

- Implementation of IEP (29)
- Development, Review and Revision of IEP (16)
- Evaluations and Reevaluations (12)
- Free, Appropriate Public Education (20)
  - Personnel Qualifications (8)
  - Least Restrictive Environment (10)
  - Prior Notice by Public Agency (4)
  - Child Find (3)
  - Procedural Safeguards Notice (2)
  - Access Rights (2)

- IEP Team (1)
- Parent Participation (3)
- Confidentiality (3)
- Related Services (2)
- Discipline Procedures (1)
- Amendment of Records at Parent Request (1)
- When IEPs must be in effect (1)
- Physical Education (1)
- Equitable Services (1)
- Dispute Resolution (1)
FY23 YTD Findings of Non-Compliance in Formal Complaints (64 Findings against 20 districts)

- Implementation of IEP (15)
- Free, Appropriate Public Education (13)
- Evaluations and Reevaluations (8)
- Development, Review and Revision of IEP (7)
- Least Restrictive Environment (4)
- Prior Notice by Public Agency (3)
- Parent Participation (2)
- Access Rights (2)

- Related Services (2)
- When IEPs must be in effect (2)
- Personnel Qualifications (1)
- IEP Team (1)
- Confidentiality (1)
- Discipline Procedures (1)
- State Monitoring (1)
- Service Plan (1)
Implementation of IEP
Implementation of IEP (34 C.F.R. § 300.320)

• This regulation defines an IEP and details the required components of an IEP.

• “Each public agency must ensure that, as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.” 34 C.F.R. § 300.323(c)(2)

• Overarching issue: Students not receiving the special education and related services required in the IEP
Incorrect service model

- Student’s IEP required collaborative instruction in a general education setting for 90 minutes weekly in science and English language arts (ELA) and 90 minutes small group instruction for social skills/study skills; On May 2, 2022, the IEP Team agreed to move the student to homebased instruction for the rest of the school year; No changes were made to placement or service hours in the student’s IEP; Student was using asynchronous computer program for academics and study skills teacher “checked” on the student daily

- High school student’s IEP required 21.5 hours of small group instruction in all academic areas and job readiness training via opportunities within the school building; for first semester, the student worked with the custodian and missed his ELA block
Incorrect service model 2

• Middle school student’s IEP required co-teaching instruction 55 minutes daily in ELA, Mathematics, Science, and Social Studies; the district moved to block scheduling with 55-minute reading enrichment class, (2) 90-minute blocks of core subjects, 1 connections, and 50-minute intervention period daily; Student’s IEP required 550 minutes every two weeks of co-teaching instruction in each core content areas, but current schedule only included 450 minutes every two weeks of co-teaching instruction in each core content area
Lack of documentation that student received special education and related services required in the IEP

• Kindergartener’s IEP included 45 minutes daily of supportive instruction in alternate science/social studies units and specials with paraprofessional in the general education setting; after change in kindergarten teacher’s schedule, student went to general education classroom during “center time” instead of science/social studies time

• Due to a district’s failure to re-enroll the student at the high school following the end of the interim alternative educational setting of homebased instruction, the student did not receive the special education services in his IEP for the first two months of the 2022-2023 school year
Lack of documentation that student received special education and related services required in the IEP 2

• Transportation added to student’s IEP on September 23, 2021, but transportation not provided until November 1, 2021

• Check in/check out system added to student’s IEP on September 2, 2022, but not provided until October 7, 2022.
Lack of documentation that parent received periodic progress on goals

- Student’s IEP required reporting of student’s progress on annual goals every nine weeks, but parent only received two progress reports the entire school year.
- Parent was provided IEP progress reports after making a records request in July 2022, but never received the progress reports a reasonable time after they were completed.
- No documentation that parent received quarterly IEP progress reports until parent hired an attorney in March 2022.
Absence of certified personnel (e.g., teacher/provider vacancies and absences)

• Student did not have one-to-one paraprofessional as required in the IEP when the paraprofessional was promoted, and no replacement provided

• Student’s IEP requires a bus monitor to provide emergency seizure medication; District hired three different monitors who all declined or resigned from the position
Absence of certified personnel (e.g., teacher/provider vacancies and absences) 2

• Two students did not receive supportive services when paraprofessional was absent, and substitute was used to cover another class

• Student did not receive supportive instruction in science when the paraprofessional was absent more than 10 cumulative days and no substitute assigned in the paraprofessional’s absence
Lack of fidelity and/or consistency in provision of IEP/BIP/student supports

• At beginning of sixth grade year, student’s daily behavior sheet, supervisory accommodations during breaks, restroom accommodation, token economy and counseling services were not provided consistently
What you need to think about...

- Procedures for checking IEP service pages before start of school year (especially the transition years from elementary to middle and middle to high)
- Procedures when special education teachers and related service providers are absent and when there is a vacancy (also, missed IEP services)
- How to document services and accommodations
- Ensuring all teachers are aware of students’ IEPs
- Collecting sufficient progress monitoring data
- Providing timely progress reports
- Procedures for transfer students with IEPs
Free Appropriate Public Education (FAPE)
§300.17 Free appropriate public education

• Free appropriate public education or FAPE means special education and related services that—
  • (a) Are provided at public expense, under public supervision and direction, and without charge;
  • (b) Meet the standards of the SEA, including the requirements of this part;
  • (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved; and
§300.17 Free appropriate public education

• (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.320 through 300.324.
  • 34 C.F.R. § 300.320 – Definition of IEP
  • 34 C.F.R. § 300.321 – IEP Team
  • 34 C.F.R. § 300.322 – Parent Participation
  • 34 C.F.R. § 300.323 – When IEPs must be in effect
  • 34 C.F.R. § 300.324 – Development, review, and revision of IEP
Free appropriate public education (FAPE) 2

• Kindergarten student placed in a booster seat and strapped in during calendar time due to self-stimming behavior that was a distraction to other students; the use of booster seat in this way met the definition of a mechanical restraint in violation of Georgia’s Seclusion and Restraint Rule.

• The booster seat was not being used to promote body positioning, prevent self-injurious behavior, or used to secure the student during transportation.
Evaluations and Reevaluations
Evaluations and Reevaluations
(34 C.F.R. §§ 300.301-300.306)

• These regulations address initial evaluations (request, timelines, procedures), reevaluations, and eligibility.

• For additional information on timelines, refer to State Board of Education Rule 160-4-7-.04(1), which provides exceptions for holiday periods, summer vacations, and when consent is received with less than 30 days remaining in the school year.
Evaluations and Reevaluations 2

• 12th grade student eligible under Autism Spectrum Disorder (ASD), Other Health Impairment (OHI), Specific Learning Disability (SLD), Speech-language Impairment (SI)

• Parents sent district a “Notice of Stay Put” on April 27, 2022, in attempt for district not to graduate the student; Student turned 18 on May 6, 2022; Since student earned necessary Carnegie units, on May 19, 2022, district team members recommended student to graduate with regular education diploma; Parents disagreed and filed due process on the same day; District drafted student’s summary of performance (SOP), but did not provide the SOP to the student; District conferred diploma to student in late May 2022; Due process was dismissed because parents were not the “IDEA parent” once rights transferred to the student at age 18
Evaluations and Reevaluations 3

• Student determined initially eligible for special education and related services under OHI; Eligibility report states that OHI eligibility is based on diagnoses of ADHD and Specific Learning Disorder, with impairments in reading (dyslexia) and math (dyscalculia).

• Eligibility under OHI for Specific Learning Disorder due to dyslexia and dyscalculia was inaccurate because those impairments are not chronic or acute health problems; Student exhibited pattern of strengths and weaknesses in process abilities and academics, and data, including the private psychological evaluation, supported eligibility under SLD.
Evaluations and Reevaluations 4

• Student evaluated in previous years and determined not eligibility; last ineligible determination based on private evaluation was on April 11, 2022; Parent sent email to special education director requesting a special education evaluation on August 29 and 31, 2022, and September 2 and 7, 2022; No parental consent for evaluation and/or prior written notice (PWN) provided.

• Parent requested a functional behavioral assessment (FBA) on August 2021; parental consent provided and signed in October 2021; parent emailed teacher in August 2022 about status of FBA; IEP Team meeting in September 2022 and new consent provided and signed; FBA completed in November 2022
Evaluations and Reevaluations 6

• Student’s initial referral for evaluation was related to concern in speech and behavior, but no speech evaluation conducted; the psychological evaluation and eligibility report contained data inconsistent with the teachers’ behavior rating scales and district failed to conduct additional testing after inconsistencies in the area of behavior; district failed to consider the private psychological evaluation with diagnosis of Autism
Evaluations and Reevaluations 5

• Student’s reevaluation due by October 19, 2021; district did not begin reevaluation process until September 9, 2021 and Team determined additional data was needed; as of December 9, 2022, the reevaluation was not completed

• District timely completed the student’s reevaluation and determined that no additional data were needed to determine continued eligibility and the student’s educational needs, but the district failed to notify the parent of their right to request an assessment
What are the timelines for completing the reevaluation process?

• The 60-day timeline only applies to the initial evaluation. Once a child is in special education, all further evaluations are considered reevaluations, regardless of whether there is any change in the disability(ies).

• The reevaluation must be completed within a reasonable timeframe, no later than the three-year reevaluation date.

• However, many factors should be considered in determining a reasonable timeframe for the completion of a reevaluation, such as the needs of the child, the date of the last comprehensive evaluation, parent input, and changes in the child’s behavior, attendance, and rate of progress.

• From GaDOE Special Education Rules Implementation Manual, Evaluation and Reevaluation Chapter (August 6, 2018)
34 C.F.R. 300.305(d)

• Requirements if additional data are not needed.
  • (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of -
    • (i) That determination and the reasons for the determination; and
    • (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.
  • (2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.
Evaluations/Reevaluations - What you need to think about…

• Procedures when a parent requests a special education evaluation
• Disseminating those procedures to all staff, including those participating in Student Support Team (SST)/Response to Intervention (RTI) and Section 504 meetings
• Procedures for requests for reevaluations and decisions that no additional data are needed for reevaluation
• Conducting and documenting comprehensive evaluations and reevaluations
Development, Review, and Revision of IEP
Development, Review, Revision of IEP

(34 C.F.R. § 300.324)

• This regulation details, among other things, the factors that must be considered when developing an IEP, when an IEP can be amended without an IEP Team meeting, the annual review requirement, and when an IEP must be revised.

• 34 C.F.R. § 300.324(b)(1)(ii) says that “Each public agency must ensure that. . . the IEP Team revises the IEP, as appropriate, to address any lack of expected progress toward the annual goals. . . .”
Development, Review, Revision of IEP

• At beginning of the school year, kindergarten student began hitting, scratching, and biting as documented on daily communication between parent and teacher; despite frequency and escalation, IEP Team meeting not held until parent requested in September 2021; No documentation in September 2021 IEP of discussion of behavioral data, no positive behavioral interventions or supports included, and IEP states student does not have interfering behaviors; Behaviors continued and at least two more IEP Team meetings held, but no behavior goals or behavior intervention plan; District waited 6 months before seeking consent to conduct an FBA
Development, Review, Revision of IEP

2

• After no bus monitor was available for the student, the parent requested homebased services until transportation was restored; IEP Team meeting held, but district failed to address parent’s request.

• In systemic complaint, for 2 of the 12 students, IEPs were not reviewed and revised to address stagnate progress and regression on annual goals; for 1 student, the IEP was not reviewed and revised to address mastery of annual goals.
Development, Review, Revision of IEP

3

• At November 2021 annual IEP, the Team determined that extended school year (ESY) services were not required, but would reconvene in the spring; the Team met in January, twice in March, and in April, but no documentation of discussion of ESY services; in late June, a coordinator informed parent that a teacher was available to provide ESY services and that a meeting would be held; no meeting was held and no ESY services provided; In November 2022 annual IEP, the Team determined again that ESY was not required

• Student’s annual review was due on October 27, 2021, but annual review IEP not completed until March 23, 2022
Development, Revision, Revision of IEP - What you need to think about…

• Making sure that IEP Teams consider parent information in a timely manner
• Not waiting for the parent to ask for an IEP Team meeting (the burden is on the public agency)
• Honoring parent’s right to request an IEP Team meeting
• Ensuring timely annual review IEP Team meetings (start scheduling early!!!)
Least Restrictive Environment (LRE)
Least Restrictive Environment (LRE) (34 C.F.R. §§ 300.114-300.117)

• These regulations address the student being educated with students without disabilities, “to the maximum extent appropriate,” the availability and consideration of the full continuum of alternative placements, requirements for placement decisions, and provision of nonacademic and extracurricular services and activities.
Least Restrictive Environment (LRE) 2

• IEP Team determined the student would receive homebased instruction for the last month of school following a short-term suspension; however, the IEP Team did not amend the student’s placement or provide justification for more restrictive placement.

• Student not making progress academically or behaviorally at the alternative school; IEP Team determined home based instruction was student’s LRE but failed to include a reintegration plan.
Least Restrictive Environment (LRE) 3

- Parent provided hospital homebound (HHB) paperwork in accordance with State HHB Rule to district for student to attend “medically necessary” 8-week feeding program; IEP Team “denied” HHB and district later argued that HHB was not the student’s LRE; District failed to provide the full continuum of alternative placements to meet the needs of the student, including HHB and homebased services.
LRE - What you need to think about...

• Making sure that IEPs document why students may not have access to non-disabled peers

• Making sure that LRE determinations are based on the individual student and not the availability of resources and supports in the district

• Making sure the full continuum of alternative placements is available and considered, as appropriate
Prior Written Notice
Prior notice by the public agency; content of notice (34 C.F.R. § 300.503(a))

- Written notice
- Given to parents of a child with a disability
- A reasonable time before the public agency:
  - Proposes or Refuses to initiate or change:
    - the identification of the child
    - the evaluation of the child
    - the educational placement of the child
    - the provision of a free appropriate public education (FAPE) to the child
- Meets seven (7) requirements of 34 C.F.R. § 300.503(b)
Prior Written Notice 2

- During an “informal meeting” on July 29, 2022, with parent, special education director, special education teacher, assistant principal, and two general education teachers, the parent discussed the need for a behavior intervention plan (BIP) for the student due to off-task behavior and asked for an evaluation; the district staff said the student was being supported in the classroom and was not in current need of a BIP or evaluation; On August 17, 2022, the parent emailed the district rejecting the “school-wide behavior plan” they sent to her and reasserting her request for a BIP and FBA; Parent also filed the state complaint the same day.

- PWN was not provided to the parent until after an IEP Team meeting on August 25, 2022
There is no requirement in the [IDEA] regarding the point at which the written notice must be provided as long as it is provided a reasonable time before the LEA actually implements [or refuses to implement] the action. This provides parents, in the case of a proposal or refusal to take action, a reasonable time to fully consider the change and respond to the action before it is implemented. PWN must be provided “irrespective of whether or not the proposal or refusal is made during the course of an IEP Team meeting.”
Prior Written Notice 3

• Parent emailed district representative requesting private school at public expense due to the student having transition anxiety, trust issues, and other concerns; No response and/or PWN.

• District moved to block scheduling and the student’s type, frequency, and amount of special education services changed; PWN was not provided a reasonable time before this change in educational placement and provision of a FAPE; Parent sent emails asserting that student’s IEP was not being implemented; IEP Team meetings were held but no PWN provided
PWN - What you need to think about…

• Make sure that PWNs are provided within a reasonable time before the district implements or refuses to implement the action.

• Documents such as IEPs must meet all 7 requirements of IDEA’s PWN requirements.
Parent Participation (34 C.F.R. § 300.322)

- The student’s annual review IEP was due by October 14, 2022; a month before the annual review IEP was due, the teacher contacted the parent to ask if she could meet the day before the due date (October 13th); the parent agreed and then the day before the scheduled meeting (October 12th), the parent said she unable to attend and requested the meeting be rescheduled to October 14th; District refused and held annual review without the parent
When IEPs must be in effect (34 C.F.R. § 300.323)

- Student initially determined eligible for special education and related services under emotional behavioral disorder (EBD) on November 4, 2021; initial IEP developed on November 12, 2021, with implementation date of January 20, 2022. Parental consent for services was not provided until January 19, 2022.

- No documentation that student’s general education co-teacher was aware of student’s IEP accommodations when she enrolled in her class in March 2022.
Other IDEA violations

• IEP Team (34 C.F.R. § 300.321)
  - General education co-teacher filed a systemic complaint on behalf of 10 students in her class alleging that she had only participated in one student’s IEP Team meeting; Seven student’s IEP Team meetings included another general education teacher of the students, but other two students had no general education teacher in attendance or written excusal.

• Related Services (34 C.F.R. § 300.34)
  - For first three days of school, no bus provided in afternoon to take student home
Other IDEA violations 2

• Services Plan (34 C.F.R. § 300.37)
  • District refused to provide speech-language therapy to student with a current service plan when the private school the student attended did not attend the timely and meaningful consultation meetings or sign a written affirmation that such meetings had occurred.

• Confidentiality (34 C.F.R. § 300.622)
  • General education teacher mentioned the student’s accommodations and dyslexia diagnosis in front of other students while speaking to another teacher.
Other IDEA violations 3

• Discipline Procedures (34 C.F.R. § 300.530)
  • Student received 10 days OSS after a fight; Determined not to be a manifestation of the disability; student received 10 more days OSS after another fight; no documentation that student received special education services on the 11 day of OSS