

Hawaii Department of Education Special Education Dispute Resolution Strategic Plan

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Introduction

The Hawaii State Department of Education (HIDOE) responsibility for the implementation of the Individuals with Disabilities Education Act (IDEA) and Chapter 60 of the Hawaii Administrative Rules (HAR) is divided between two branches, the Exceptional Student Branch (ESB) and the Monitoring and Compliance Branch (MAC Branch). To achieve improved outcomes, the ESB provides direction, professional development (PD), and technical assistance on program implementation and improvement. The MAC Branch oversees monitoring activities to ensure HIDOE meets the requirements of both IDEA and HAR Chapter 60 regulations and provides targeted support related to these requirements. HIDOE has experienced staff turnover and has new special education leadership in the MAC Branch. The MAC Branch contracted with WestEd to review its implementation of the dispute resolution system and dispute resolution data collection to ensure they meet the requirements of IDEA and are effectively leveraged as a part of the state's broader general supervision system.

Under 34 C.F.R. § 300.149 of the IDEA, each state must have a general supervision system in effect to ensure that it complies with the monitoring and enforcement requirements in 34 C.F.R. §§ 300.600 through 300.602 and §§ 300.606 through 300.608. The dispute resolution system is one component of HIDOE's general supervision system. With the implementation of internal procedures, a state's dispute resolution system can both protect the rights of students and parents and produce valuable data to identify areas for improvement and evaluate the effectiveness of the state's implementation of the IDEA. Additionally, under the IDEA, states must have reasonably designed dispute resolution procedures and practices to effectively implement: (1) the state complaint procedure requirements in 34 C.F.R. §§ 300.151 through 300.153; (2) the mediation requirements in 34 C.F.R. §300.506; and (3) the due process complaint and impartial due process hearing and expedited due process hearing requirements in 34 C.F.R. §§ 300.500, 300.507 through 300.518 and 300.532. Further, the U.S. Department of

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Education collects IDEA Part B dispute resolution data through the IDEA Part B Dispute Resolution Survey in the EDFacts Metadata and Process System. Specifically, the Dispute Resolution Survey collects counts of the occurrences as well as counts of the timely resolution of: (1) written, signed complaints; (2) mediation requests; (3) due process complaints; and (4) expedited due process complaints.

WestEd is pleased to offer this report after completing its review of HIDOE's dispute resolution system and dispute resolution data collection. We appreciate the HIDOE's transparency and community feedback throughout the review process. This report contains an analysis of the dispute resolution system, including the state's Procedural Safeguards Notice and the dispute resolution data collection, and how it intersects with the agency's broader general supervision system. Specifically, WestEd conducted a Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analysis and provides recommendations for improvement.

Methodology

From January through April 2022, a WestEd team with expertise in the continuous improvement of state's general supervision system under the IDEA, engaged in a review of the HIDOE's dispute resolution system. Specifically, the team reviewed the current HIDOE dispute resolution procedures, the state's Procedural Safeguards Notice, HIDOE's website and any publicly available information, and analyzed dispute resolution data and the data collection system. As part of the review process, WestEd organized survey instruments to collect responses from stakeholders, including parents, parent organizations, District Educational Specialists (DEs), Complex Area Superintendents (CASs), and other HIDOE staff regarding the state's dispute resolution system. The survey responses allowed WestEd to utilize meaningful stakeholder involvement to inform its recommendations for HIDOE system improvement found in this report. The questions were specifically aimed at understanding the HIDOE dispute resolution system (procedural safeguards, mediation, written complaints, and due process hearings). WestEd also conducted interviews with stakeholders who wanted to provide additional feedback. All responses, either written or through conversations, remain confidential and only summaries are found within this report. In the review of HIDOE's dispute resolution system, WestEd identified strengths as well as opportunities for continuous improvement.

Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analysis

The following SWOT analysis is organized into sub-categories for: (1) Procedural Safeguards Notice; (2) Mediation; (3) State Complaints; (4) Due Process Hearing Requests; and (5) Dispute Resolution Data Collection.

Procedural Safeguards Notice

Under 34 C.F.R. § 300.150, the state must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by HIDOE. Further, 34 C.F.R. § 300.504 specifically outlines

the information that each state's Procedural Safeguards Notice (PSN) must contain, including a full explanation of the mediation, state complaint, and due process systems within the state.

Strengths

- HIDOE's PSN meets the minimum requirements of IDEA as it contains the required elements under the IDEA at 34 C.F.R. § 300.504.
- Parents responding to the WestEd survey indicated that the school did provide them with a copy of the state's PSN as required by 34 C.F.R. § 300.504(a).
- HIDOE's PSN is translated into 15 different languages and is available on the state's website.

Weaknesses

- HIDOE provides minimal training to parents, teachers, and administrators regarding the content of the PSN. Respondents to the surveys requested ongoing trainings on the content of the PSN for parents, teachers, principals, DESs, and CASs.
- Parents and community members call both ESB and the MAC Branch for assistance with understanding or exercising their procedural rights under HAR Chapter 60 and the IDEA.

Opportunities

- Parents responding to the WestEd survey requested trainings and workshops as well as someone to explain and discuss the procedural safeguards. The state has active parent organizations. A strong partnership between HIDOE and Special Parent Information Network: Hawaii (SPIN), the Special Education Advisory Council (SEAC), and Leadership in Disabilities & Achievement of Hawai'i (LDAH) would provide an opportunity to deliver dynamic PSN trainings and supporting documents to parents in the community.
- HIDOE would benefit from providing a training and talking points to new administrators on the PSN, how to deliver it, how to summarize the information, and how to use more parent-friendly language.
- Parents responding to the WestEd survey indicated that HIDOE could increase stakeholder access to copies of the PSN by (1) improving the placement of the electronic copy on the HIDOE's website; (2) having printed copies available in school buildings; and (3) creating the PSN in other mediums, for example video.
- ESB and the MAC Branch are currently working on a system to coordinate and track inquiries.

Threats

- HIDOE's PSN, in its current form, is not specifically tailored to meet the needs of the stakeholders because it is not written in language that is understandable to the general public. Respondents to WestEd's surveys, school administrators and parents alike, stated that the PSN was difficult to understand.

Mediation

Under 34 C.F.R. § 300.506, each state must ensure that procedures are established and implemented to allow parties to dispute any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, and to resolve disputes through a mediation process. Further, it is the responsibility of a State Educational Agency (SEA), pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, to ensure the due process hearing procedures are conducted in accordance with the IDEA requirements at 34 C.F.R. §§ 300.507 through 300.518.

Strengths

- HIDOE makes mediation available at no cost to schools and parents through the Mediation Center of the Pacific (MCP).
- When a concern arises, the DESs are informed by HIDOE to reach out to parents to offer mediation as a dispute resolution alternative.
- HIDOE sends the mediation brochure to staff to raise awareness regarding the dispute resolution option.
- When a mediation results in a settlement agreement, the MAC Branch receives a copy to follow through with enforcement.
- HIDOE has an optional form on the website to request a mediation.

Weaknesses

- The majority of DESs and District Resource Teachers who responded to the survey indicated they are not very familiar with the procedures for requesting mediation.
- Parents responding to the WestEd survey indicated that while mediation is covered in the PSN, it is not advertised well in the community.
- Mediation, as a dispute resolution option, is extremely underutilized in the state.
- Respondents to WestEd's surveys expressed concern regarding mediators' knowledge of the IDEA and HAR Chapter 60.
- HIDOE does not track data on and has limited knowledge of who is requesting mediation or whether there are specific Complex Areas that utilize mediation more effectively than others.
- HIDOE does have parties sign a confidentiality agreement before mediation starts. However, it is unclear what the procedure is if a party fails to sign the agreement.
- The HIDOE currently does not have a mechanism to integrate the mediation system in the broader general supervision system.

Opportunities

- HIDOE could translate the optional form used to request mediation into the state's required languages.
- The HIDOE's mediation brochure is general and does not cover exactly what concerns can be addressed through mediation. Updating the state's material on mediation and communication would increase the use of the process by the community.

Threats

- Most parents responding to the WestEd survey indicated that they did not know mediation was available to resolve IDEA-related disputes.
- While the qualifications and training for mediators required by IDEA are stipulated in the HIDOE's mediation contract, HIDOE does not have a mechanism to ensure that the mediators assigned to special education issues are knowledgeable about HAR Chapter 60 and the IDEA requirements.
- Respondents to the WestEd survey indicated a concern that the mediation vendor does not respond mediation requests in a timely manner.
- Currently, HIDOE does not have internal procedures regarding the general supervision of the mediation process, including, but not limited to, the time it takes for mediations to be held and the implementation of any signed written mediation agreement.

State Complaints

Under 34 C.F.R. § 300.151, each state must adopt written procedures for (1) resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of 34 C.F.R. § 300.153; (2) the filing of a complaint with the SEA; and (3) widely disseminating the state complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. An SEA is required to resolve any complaint that meets the requirements of 34 C.F.R. § 300.153. Further, it is the responsibility of an SEA, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, to ensure that the state complaint procedures are carried out in accordance with the IDEA requirements at 34 C.F.R. §§ 300.151 through 300.153.

Strengths

- HIDOE does not require stakeholders to use the model form to file a state complaint.
- When a party submits a written state complaint with missing information, the MAC Branch's current procedure is to reach out to the party to acquire the missing information.
- The MAC Branch resolves any complaint that meets the requirements of 34 C.F.R. § 300.153.

- The MAC Branch reviews systemic compliance with every written state complaint submitted. Further, when there is a systemic issue, the state's written decision addresses the systemic corrective action.
- The MAC Branch has a process for granting appropriate extensions.

Weaknesses

- Currently, the mechanism for tracking the required state complaint timelines does not provide data to be used in the broader general supervision responsibilities.
- The MAC Branch needs to strengthen the internal state complaint procedures for consistency and sustainability.

Opportunities

- Parents responding to the WestEd survey indicated that information regarding state complaints was difficult to locate on HIDOE's website. Further, during interviews with the MAC Branch staff, WestEd learned that staff understand that there is a community need with regards to updating the website so that information is accessible. When updating the usability of the website, the MAC Branch would also have the opportunity to create parent-friendly informational materials to accompany the state's PSN.
- CASs and DESs could benefit from trend data regarding state complaint decisions and regular communication regarding the concerns that are being brought to the MAC Branch. This would allow for opportunities to provide professional development and technical assistance.
- Parents responding to the WestEd survey indicated that the previous MAC Branch staff who handled the state complaint process was quick to side with the schools and inappropriately spoke to parents, including trying to persuade parents not to file a state complaint. Implementation of the recommendations in this report and the corresponding work to improve the state complaint system will provide the opportunity to improve public perception of the process.

Threats

- The state complaint model form does not delineate required information from optional information and is only provided in English.
- The lack of written state complaint internal procedures put the MAC Branch in a difficult situation of trying to implement the process while creating written procedures. The creation of written internal procedures is needed to ensure that the state complaint system is consistently implemented, from the filing of a complaint to closing out required actions, including how the timeline is tracked when the parties are also engaged in mediation or due process and how to address a complaint that is filed against HIDOE.

- The MAC Branch could improve the tracking of corrective actions required by state complaint decisions, ensure that required actions are closed in a timely manner, or use data on correction or lack of correction to inform its other general supervision activities.

Due Process Hearing Requests

Under 34 C.F.R. § 300.507(a), a parent or a public agency may file a due process complaint to request a due process hearing on any matter relating to the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE) to the child. Further, it is the responsibility of an SEA, pursuant to its general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, to ensure that the due process hearing procedures are carried out in accordance with the IDEA requirements at 34 C.F.R. §§ 300.507 through 300.518.

Strengths

- The Attorney General's Office of Dispute Resolution sends the due process hearing decisions to the MAC Branch. The MAC Branch redacts any personally identifiable information and posts them to the HIDEO's website.

Weaknesses

- Once the Attorney General's Office of Dispute Resolution sends the due process hearing decisions to the MAC Branch and it is redacted for personally identifiable information, the MAC Branch does not have a consistent process to share the decision with ESB and SEAC, both of which would ensure that the results are used to inform the state's other general supervision activities.

Opportunities

- Provide CASs and DESs with trend data regarding due process decisions to assist with communication regarding the concerns that are being brought to the Attorney General's Office of Dispute Resolution. This provides an opportunity for professional development and technical assistance to support CASs and DESs with the application of HAR Chapter 60 and the IDEA.
- CAS and DES interviews raised a potential conflict of interest when the Attorney General's office both administers due process hearings and represents Complex Areas and Districts in due process hearings, at the expense of those entities.
 - On December 16, 2020, after reviewing this potential conflict, the Office of Special Education Programs (OSEP) determined that HIDEO has taken appropriate steps to establish safeguards that are reasonably designed to ensure parties in a due process complaint are afforded their rights to a hearing officer that meets the minimum requirements in 34 C.F.R. § 300.511(c), including the impartiality requirements.

Threats

- The due process model form does not delineate required information from optional information and is only provided in English.
- In accordance with the general supervisory responsibility under 34 C.F.R. §§ 300.149 and 300.600, HIDOE needs to improve the methods to ensure that the due process hearing procedures are carried out in accordance with the IDEA requirements at 34 C.F.R. §§ 300.507 through 300.518. Specifically, the MAC Branch must be able to track whether resolution sessions are taking place appropriately, specific extensions are being granted accordingly, decisions are rendered within the timeline, expedited due process hearing are being addressed with the appropriate timeline, and decisions are being implemented in a timely manner.
- Through interviews with HIDOE, the need for training and ensuring that expedited due process hearings are conducted appropriately emerged as a need.
- Throughout the various stakeholder interviews, the request for training regarding due process was a present theme, indicating a lack of information provided to parents, including the PSN in parent-friendly language that is required to inform parents about due process. Parents responding to the WestEd survey indicated that parents need materials presented in a parent-friendly manner and training should be provided at the school level for all administrators.

Dispute Resolution Data Collection

The U.S. Department of Education collects IDEA Part B dispute resolution data through the IDEA Part B Dispute Resolution Survey in the EDFacts Metadata and Process System. Specifically, the Dispute Resolution Survey collects counts of the occurrences and timely resolution of (1) written, signed complaints; (2) mediation requests; (3) due process complaints; and (4) expedited due process complaints. Each year, OSEP uses Timely State Complaint Decisions and Timely Due Process Hearing Decisions as factors in scoring the IDEA Part B Results-Driven Accountability Matrix for its annual process of determining whether HIDOE meets the requirements of IDEA.

Strengths

- The MAC Branch reviews all dispute resolution data as a team, creating checks and balances before submitting the information to the U.S. Department of Education.

Weaknesses

- While the MAC Branch reports the required data to EDFacts, it does not have procedures to routinely organize and use additional data to inform its general supervision system.

Opportunities

- HIDOE could benefit by creating a comprehensive data system to better document what data should be collected and the procedures for collecting and reporting those data.

Threats

- The staff that oversaw the internal processes for the collection of dispute resolution data did not inform the rest of the MAC Branch staff about data collection and validation processes. Therefore, in order to build sustainability, the MAC Branch needs to continue to develop a comprehensive data collection and validation system.
- HIDOE currently does not have written business rules for the validation and reporting of dispute resolution data.

Recommendations for HIDOE's Dispute Resolution System

WestEd provides the following recommendations for HIDOE to consider implementing over a five-year period that reflects the principles of Implementation Science¹ and need for continuous improvement. The recommendations are organized by the year and stage of implementation and further disaggregated into six topic areas that include the five areas of the SWOT analysis as well as system recommendations intended to address all areas: (1) System Recommendations; (2) Procedural Safeguards Notice; (3) Mediation; (4) State Complaints; (5) Due Process Hearing Requests; and (6) Dispute Resolution Data Collection and Reporting.

The years of implementation are marked from the issuance of this report in May 2022 and defined accordingly: Year One (July 2022 – June 2023); Year Two (July 2023 – June 2024); Year Three (July 2024 – June 2025); Year Four (July 2025 – June 2026); and Year Five (July 2026 – June 2027). Many of the recommendations are comprehensive and therefore based on progress review; adjustments and extensions may be warranted beyond the year indicated. Further, the Year One recommendations were prioritized because they were highlighted as threats in the SWOT Analysis above.

Year One, Exploration and System Development (July 2022 – June 2023)

- System Recommendations
 - (Highest Priority) Draft and adopt written policies, to be shared publicly as needed, and internal procedures for mediation, state complaints, and due process hearing requests. These internal procedures should include all required elements within each dispute resolution process, the activities HIDOE will take to monitor the specific processes, how HIDOE will ensure mediation agreements

¹ Implementation Science is the systematic study of variables and conditions that lead to full and effective use of evidence-based programs and other effective innovations in typical human service settings. Blase and Fixsen, 2010 National Implementation Research Network.

are upheld and required actions in state complaint and due process decisions are implemented, and the connection with the broader general supervision system.

- Review and revise any current internal templates used by the MAC Branch for the dispute resolution processes. Where necessary to promote consistency, the MAC Branch should create templates to be used in responding to the public.
- Update the state complaint and due process model forms provided by the MAC Branch for the public. The model forms and the mediation request form should be translated into the state's required languages and posted in an easy-to-find, accessible location on the HIDOE website.
- Procedural Safeguards Notice
 - Refine the PSN to be responsive to stakeholder requests to tailor the resources to the state procedures in a more understandable format. Revising the language in the PSN would assist both parents and teachers in understanding the content of the document.
- Mediation
 - Clarify with mediation contractor that parties are not required to sign a confidentiality agreement before engaging in mediation. Further, this should be an element included in any mediation trainings.
 - Update the state's mediation pamphlet and create other promotional material.
- State Complaints
 - Review complaint decisions from the past five years to ensure that any required actions were implemented and document that implementation.
- Due Process Hearing Requests
 - Review due process decisions from the last five years to determine whether the hearing officer found in favor of the parent and if the order was implemented appropriately. If the order has not been closed, take steps to ensure correction.
- Dispute Resolution Data Collection
 - Establish policies and internal procedures to collect dispute resolution data required under IDEA Part B Section 618, including (1) assigning roles and responsibilities that establish decision-making authority and accountability for the dispute resolution data systems; (2) creating business rules for documenting, recording, and communicating rules used during the collection and validation of IDEA dispute resolution data; (3) creating data quality and validation processes (e.g., edit checks, database format checks, field validation restrictions, import restrictions/checks); (4) documenting communication mechanisms to share and

use dispute resolution data; and (5) creating processes to ensure that contractors are implementing dispute resolution processes with fidelity and are reporting valid and reliable data.

Year Two, Initial Installation (July 2023 – June 2024)

- System Recommendations
 - Implement adopted internal policies and procedures for mediation, the state complaint process, and due process, and refine as necessary.
 - Conduct a review of the dispute resolution material housed on the HIDEOE website to assess how to increase usability of resources and make updates accordingly. Work with partner agencies to link to dispute resolution information on the HIDEOE website to increase access. Ensure the documents posted on the website are consistent with updated policies and internal procedures.
 - Develop a communication plan between the ESB staff and the MAC Branch staff to increase communication regarding state complaint and due process decisions.
 - Provide Complex Areas a report that captures issues raised through dispute resolution, such as trends, issues raised, required actions, and informal inquiries. Options to consider for providing the information are reported out at the administrator and DES monthly meetings. This allows the opportunity to provide professional development and technical assistance on the application of IDEA and HAR Chapter 60 regulations.
- Procedural Safeguards Notice
 - Provide training to new administrators on the PSN, how to deliver it, how to summarize the information, and how to use more parent-friendly language.
 - Create a summary document of the PSN for staff to use when explaining the information to parents. This resource will also establish an expectation for how every school introduces the PSN to parents.
 - Create companion materials for the updated PSN and post on the HIDEOE website.
 - Partner with SPIN, SEAC, and LDAH to provide trainings to parents in the community regarding the PSN.
- Mediation
 - Conduct ongoing training throughout the state for ESB, CASS, and DESs regarding the procedures for requesting mediation.

- State Complaints
 - Enhance the state complaint tracking system to support the MAC Branch with its general supervision responsibilities, including whether the same issues raised in different complaints are treated similarly and identify patterns or trends.
- Due Process Hearing Requests
 - Develop a consistent process to share the decisions with ESB and SEAC after the Attorney General’s Office of Dispute Resolution sends the due process hearing decisions to the MAC Branch and personally identifiable information is redacted.
 - Provide regular opportunities, at least annually, for ESB and the MAC Branch to have a comprehensive discussion regarding due process procedures, including how to advise the Complex Areas when there is an IEP Team meeting with a party to a due process.
 - Create a resource that lists low or no cost due process assistance and post it on the HIDOE website.
- Dispute Resolution Data Collection
 - Implement data collection and reporting procedures developed in Year One and refine procedures as necessary, collecting data to inform a future database.
 - Continue and increase communication and data sharing across branches.

Year Three, Continued Installation (July 2024 – June 2025)

- System Recommendations
 - Collaborate across the ESB and the MAC Branch to create a call center for special education inquiries. This call center number/email should be publicized on the HIDOE website and any HIDOE materials.
- Procedural Safeguards Notice
 - Explore creating the PSN in other mediums, for example video.
- Mediation
 - Conduct a community outreach campaign to promote the benefits of mediation as an option to resolve disputes, partnering with SPIN, SEAC, and LDAH.
- Dispute Resolution Data Collection
 - Develop a comprehensive dispute resolution database to track the data required by EDFacts as well as topics at issue in the disputes. This would improve HIDOE’s ability to customize the monitoring and professional development for the Complex Areas.

Years Four and Five, Implementation and Continuous Improvement (July 2025 – June 2026 and July 2026 – June 2027)

- System Recommendations
 - Continue to implement and assess the progress in implementing the recommendations contained in this report, soliciting feedback from stakeholders including CASs, DESs, SPIN, SEAC, LDAH, and parents.
 - Review the implementation of the adopted policies and internal procedures for mediation, the state complaint process, and due process. Revise policies and procedures as needed to continuously improve implementation.
 - Provide ongoing trainings regarding the PSN and the dispute resolution options to state stakeholders, including parents, teachers, principals, DESs, and CASs.
 - Evaluate the impact of the improvements to HIDOE’s dispute resolution system potentially including use of dispute resolution data to inform the broader general supervision system, capacity of state and local administrators, quality and validity of dispute resolution data, and stakeholder and parent perceptions of the dispute resolution system.

Conclusion

WestEd thanks the HIDOE, MAC Branch for the opportunity to conduct this review and learn more about its dispute resolution system. We commend the stakeholders for the thoughtfulness, openness, and intentionality with which they responded to the survey questions. This review highlighted HIDOE’s commitment to continuous improvement of their own practices and the willingness to see opportunities to change policies and procedures to improve results for children with disabilities. We hope the recommendations offered in this report contribute to the HIDOE’s ongoing improvement efforts.

WestEd recognizes that implementation of the recommendations in this report will require the investment of additional HIDOE resources. It will be difficult for the MAC Branch to meet its required obligations to implement IDEA requirements while simultaneously creating written procedures and completing these recommendations. The HIDOE should consider investing in additional support for the MAC Branch to implement the recommendations of this report over the next five years.