



Hawaii State Department of Education Special Education Dispute Resolution Strategic Plan

SEAC Meeting
September 9, 2022

Desired Outcomes

- ★ Department's dispute resolution responsibility
- ★ Results of the review and analysis of Hawaii's Dispute Resolution System & Data Collection
- ★ Summary of recommendations for improvement

Dispute Resolution & General Supervision Responsibility

Under 34 C.F.R. § 300.149 of the IDEA, each state must have a general supervision system in effect to ensure that the program requirements under Part B of IDEA are met.

The dispute resolution system is one component of HIDOE's general supervision system. Under the IDEA, states must have reasonably designed dispute resolution procedures and practices to effectively implement:

- the state complaint procedure requirements;
- the mediation requirements; and
- the due process complaint, impartial due process hearing, and expedited due process hearing requirements.

Implementation of internal dispute resolution procedures 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.

WestEd's Approach

Goal

Review HIDOE's implementation of its dispute resolution system and data collection to ensure IDEA requirements are met and the system is part of the state's broader general supervision system.

Methodology

From January through April 2022, WestEd conducted interviews and requested survey responses regarding HIDOE's dispute resolution system. An analysis of the dispute resolution procedures, the state's Procedural Safeguards Notice, the dispute resolution data and the data collection system, the HIDOE's website, and any publicly available information was conducted.

Outcome

Data from document reviews, interviews, and surveys were analyzed and organized in a Strengths, Weaknesses, Opportunities, and Threats (SWOT) framework.

WestEd's recommendations stem from the SWOT analysis.

SWOT Analysis

The SWOT Analysis is organized into the sub-categories for:

1. Procedural Safeguards Notice (PSN),
2. Mediation,
3. State Complaints,
4. Due Process Hearing Requests, and
5. Dispute Resolution Data Collection

1. Procedural Safeguards Notice (PSN)

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 PSN must contain a full explanation of the mediation, state complaint, and due process systems within the state.

Procedural Safeguards Notice (PSN)

Strengths:

- HIDOE's PSN meets requirements 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.
- Parents and community members call both Exceptional Support Branch (ESB) and the Monitoring and Compliance Branch (MAC) for assistance with their procedural rights under HAR Chapter 60 and the IDEA.

Procedural Safeguards Notice (PSN)

Opportunities:

- Parents requested trainings and workshops as well as someone to explain and discuss the PSN. Training collaborations between HIDOE, SPIN, SEAC, and LDAH would provide an opportunity to deliver dynamic PSN trainings and supporting documents to parents.
- HIDOE would benefit from providing a training to new administrators on the PSN, how to deliver it, how to summarize the information, and how to use more parent friendly language.
- Parents recommended increased access to 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 via video.
- ESB & MAC are currently working on a system to coordinate and track inquiries.

Threats:

- HIDOE's PSN, while it meets the IDEA requirements in its current form, is not specifically tailored to meet the needs of Hawaii's stakeholders.
- 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.

2. Mediation

Under 34 C.F.R. § 300.506, each state must ensure that procedures are established and implemented to allow parties to disputes involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. Further, it is the responsibility of HIDOE, 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.

Mediation

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 District Educational Specialists (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.
- When a mediation results in a settlement agreement, MAC receives a copy to follow through with enforcement.
- HIDOE has an optional form on the website to request mediation.

Weaknesses:

- The majority of DESs and District Resource Teachers responding to the survey indicated they are not very familiar with the procedures for requesting mediation.
- Parents indicated that while mediation is covered in the PSN, it is not advertised well in the community.
- Mediation is extremely underutilized in the state.
- Some respondents 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 than others.
- HIDOE currently does not have a mechanism to integrate the mediation system in the broader general supervision system.

Mediation

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 indicated that they did not know mediation was available to resolve IDEA-related disputes.
- Respondents indicated a concern that the mediation vendor does not respond timely to mediation requests.
- HIDOE currently 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.

3. 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 HIDOE; 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. HIDOE is required to resolve any complaint that meets the requirements of 34 C.F.R. § 300.153. Further, it is the responsibility of HIDOE, 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.

State Complaints

Strengths:

- HDOE 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, MAC's current procedure is to reach out to the party to acquire the missing information.
- MAC staff resolve any complaint that meets the requirements of 34 C.F.R. § 300.153.
- MAC staff review systemic compliance and address it in the written decision.
- MAC 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.
- MAC needs to strengthen the internal state complaint procedures for consistency and sustainability.

State Complaints

Opportunities:

- Parents indicated that information regarding state complaints was difficult to locate on HIDOE's website. When updating the usability of the website, HIDOE would also have the opportunity to create parent friendly informational materials to accompany the state's PSN.
- Complex Area Superintendents (CASs) and DESs could benefit from trend data regarding state complaint decisions and regular communication regarding the concerns that are being brought to MAC.
- 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 distinguish required information from optional information and is only provided in English.
- HIDOE needs written internal procedures to ensure that the state complaint system is consistently implemented, from the filing of a complaint to closing out required actions.
- MAC could improve the tracking of state complaint decision trends to inform program improvement.

4. 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 HIDOE, 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.

Due Process Hearing Requests

Strengths:

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

Weaknesses:

- MAC does not have a consistent process to share the decisions with internal and external stakeholders.

Due Process Hearing Requests

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 Office of Dispute Resolution.

Threats:

- The due process model form does not distinguish between the required and optional information.
- The due process model form is only provided in English.
- HIDOE needs to improve the methods to ensure that due process hearing procedures are carried out in accordance with the IDEA requirements, including:
 - Tracking resolution sessions are occurring appropriately,
 - Tracking specific extensions are granted accordingly,
 - Decisions are rendered within the timeline,
 - Expedited due process hearing are being addressed with the appropriate timeline, and
 - Decisions are being implemented timely.
- Various respondents requested training regarding due process presented in a user-friendly format.

5. 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. 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, the Office of Special Education Programs (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.

Dispute Resolution Data Collection

Strengths:

- MAC 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 MAC reports the required data to the U.S. Department of Education, it does not have procedures to routinely organize and use data to inform its general supervision system.

Dispute Resolution Data Collection

Opportunities:

- HIDOE could benefit from creating a comprehensive data system to better document the required data and procedures for reporting and program implementation.

Threats:

- To build sustainability, MAC needs to continue to develop a comprehensive data collection and validation system.
- HIDOE must develop written business rules for the validation and reporting of dispute resolution data.

Recommendations for HIDOE's Dispute Resolution System

WestEd provided recommendations for HIDOE to consider implementing over a five-year period.



Recommendations for HODOE's Dispute Resolution System

- Year One: July 2022 - June 2023 (Already underway)
- Year Two: July 2023 - June 2024
- Year Three: July 2024 - June 2025
- Year Four: July 2025 - June 2026
- Year Five: July 2026 - June 2027

The Year One recommendations were prioritized because they were highlighted as threats in the SWOT Analysis.

Year One, Exploration and System Development: July 2022 - June 2023

System Recommendations:

- Draft and adopt written policies and internal procedures for mediation, state complaints, and due process hearing requests. This includes the activities HIDEOE will take to monitor the specific processes, how HIDEOE will ensure mediation agreements are upheld, required actions in state complaint and due process decisions are implemented, and the connection with the broader general supervision system.
- Review, revise and create internal templates used by MAC for the dispute resolution processes.
- Update the state complaint and due process model forms and translate into the state's required languages. These should be posted in an easy-to-find, accessible location on the HIDEOE website.

Year One, Exploration and System Development: July 2022 - June 2023

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.

Mediation:

- Clarify with mediation contractor that parties are not required to sign a confidentiality agreement before engaging in mediation. Further, this will be an element included in any mediation trainings.
- Update HIDOE's mediation pamphlet and create other promotional material.

Year One, Exploration and System Development: July 2022 - June 2023

State Complaints:

- Review complaint decisions from the last five years to ensure that any required actions were implemented and document 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.

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.
- Work with partner agencies to link to dispute resolution information on the HIDOE website.
- Ensure the documents posted on the website are consistent with updated policies and procedures.
- Develop a communication plan between ESB and MAC staff to increase communication regarding state complaint and due process decisions.
- Provide Complex Areas a report summarizing issues raised through dispute resolution, trends, and required actions.

Year Two, Initial Installation: July 2023 - June 2024

Procedural Safeguards Notice:

- Provide training to new administrators on the PSN, how to deliver it, how to summarize the information and 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 HIDOE website.
- Partner with SPIN, SEAC, and LDAH to provide trainings to parents in the community regarding the PSN.

Year Two, Initial Installation: July 2023 - June 2024

Mediation:

- Conduct ongoing training throughout the state for ESB staff, CASs, and DESs regarding the procedures for requesting mediation.

State Complaints:

- Enhance the state complaint tracking system to be responsive to the general supervision responsibilities under the IDEA.

Year Two, Initial Installation: July 2023 - June 2024

Due Process Hearing Requests:

- Develop a consistent process to share the decisions with ESB and SEAC after the Office of Dispute Resolution sends the due process hearing decisions to MAC and they are redacted for personally identifiable information.
- Provide regular opportunities, at least annually, for ESB and MAC to have a comprehensive discussion regarding due process procedures.
- Create a resource and post it on the HIDOE website that lists low or no cost due process assistance.

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 ESB and MAC 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 via 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 the U.S. Department of Education as well as topics at issue in the disputes.

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 and solicit feedback from stakeholders.
- Review and revise accordingly the implementation of the adopted policies and internal procedures for mediation, the state complaint process, and due process.
- 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 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 HIDOE 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.