

Maine Department of Education Due Process Office

Systemic Complaint Policy

Purpose

The commentary to the IDEA Federal Regulations of 2006 states that the Maine Department of Education (MDOE), as a State Education Agency (SEA), is required to resolve any complaints that meet the requirements of §300.153, including complaints that raise systemic issues. The Due Process Office (DPO) has determined that the efficient and timely processing, investigation, and resolution of systemic complaints requires answers to the following questions: *What constitutes a systemic complaint? Should current complaint investigation procedures be modified for allegations that are systemic? If so, in what way?* The purpose of this policy is to answer these questions and address related issues.

Systemic Complaint Definition

A systemic complaint is one which alleges that a public agency has a policy, practice, or procedure that: a) is, or has resulted in, a violation of Part B or Part C of IDEA or Chapter 101, MUSER; and b) is, or has the potential to be, applicable to a group of students, named or unnamed.

The basis for this definition can be found in *Questions and Answers on Procedural Safeguards* at the IDEA.ed.gov website. The phrase *policy, practice, or procedure* represents the essence of the definition and this policy. The district policy, practice, or procedure in question may be written or unwritten, stated or unstated, readily observable or subtly integrated into the culture of the school. Regardless of how it manifests itself, it has impacted, or has the potential to impact, multiple students.

The following are examples of policies, practices, or procedures that could serve as a basis for systemic complaint allegations:

---Despite its best efforts, the School Administrative Unit (SAU) is unable to procure the services of an occupational therapist, and, as a result, none of the students who have occupational therapy in their IEP's receive this service.

---It is the stated policy of the SAU that speech-language services can be delivered through consultation only.

---It is the practice of the SAU that no parent is allowed to refer his or her child to special education until the child completes an extended period of Response To Intervention (RTI).

---It is the practice of the SAU that all special education students are placed full-time in regular education classrooms for the first week of school, regardless of the placement agreed to in their IEP's.

---The SAU has a policy of developing behavior intervention plans only for students who are identified under the disability of Emotionally Disturbed.

These few examples are meant only to be suggestive of the nature of systemic allegations. The key factor in each example is the existence of a policy, practice, or procedure that may result in a violation of IDEA or MUSER, and has impacted, or has the potential to impact, the provision of a free, appropriate public education to a group of students.

Procedures

Systemic Complaint Investigation Request Form. A separate model form has been developed for use by parents and interested parties who wish to submit a complaint with systemic allegations [add URL]. As with other DPO model forms, its use is not mandatory, and complainants may also provide the required information by letter. The systemic complaint model form is necessary because some of the information asked for on the standard Dispute Resolution Request (DRR) is inapplicable to a systemic complaint investigation. In addition, the information that *is* required necessitates a different set of questions.

This form will not be routinely provided to all parents and interested parties who call the DPO seeking information. Rather, the form and information related to systemic complaints will be provided to those parties who report (either verbally or on their DRR) what they believe to be systemic violations.

Mediation not available. As stated in the *MDOE Special Education Complaint Investigation Procedures*, mediation is not an option for parents or interested parties who request an investigation of systemic allegations. This is because parents and interested parties do not have the right to speak for, or enter into an agreement on behalf of, children other than their own.

For all complaint investigations, the complaint investigator must provide the SAU with the opportunity to propose a resolution of the complaint (MUSER §XVI.4.A.(1)(c)(i)). In the absence of mediation, it may be appropriate for the complaint investigator to utilize the Complaint Investigation Meeting (CIM) as a forum for soliciting proposals for resolution from the SAU. Typically, the CIM serves to improve the efficiency of the investigation process by identifying more precisely the scope and nature of the dispute and of the investigation. When the allegations are systemic, however, the complaint investigator may additionally highlight for the SAU the advantages of stipulation and resolution, when and where appropriate. Any written agreement reached between the SAU and the complaint investigator is tentative, subject to the review and approval of the Commissioner. Once approved, it is binding, and subject to all the enforcement options available to the Commissioner, including the withholding of funds (MUSER §XIII.1.4.B)).

Individual versus Systemic Complaint Requests. Nothing in this policy is intended to discourage or inhibit the submission of complaint investigation requests involving individuals. If a parent has evidence of systemic violations that impact their child, they may choose to file a complaint investigation request on behalf of their child only, or they may ask for a systemic complaint investigation only, or they may request both types of investigation. If, however, the parent requests both types and then proceeds to resolve the individual allegations through mediation, any corrective action plan or complaint investigation resolution agreement that results from the systemic investigation may not, depending upon the terms of the mediation agreement, be applicable to their child. This is also true for any other child who may have been harmed by the systemic violations but whose individual allegations have been previously resolved through a due process action.

In the course of investigating allegations involving an individual, complaint investigators may occasionally determine that systemic violations have occurred. In these instances, the corrective action plan would address both the systemic and individual violations.

Establishing the Viability of a Systemic Complaint Investigation Request. Those who submit requests for systemic investigations are expected to provide a full and complete statement describing the policy, practice, or procedure that constitutes the alleged violation, as well as the “facts upon which the statement is based” (MUSER §XVI.4.B (2)(b)). As with any complaint, a due process consultant will review the request to ensure it meets the requirements and timeframes stipulated in the *MDOE Special Education Complaint Investigation Procedures*.

The complaint investigator must determine whether or not the complaint request contains sufficient information to be viable. If more information is needed, the complaint investigator will contact the complainant to request the additional information (MUSER §XVI.4.A(1)(b)). If, after giving the complainant the opportunity to provide additional information, the complaint investigator determines that the request lacks sufficient legal or factual basis, he or she may recommend that it be dismissed by the Commissioner.

Summary

This policy defines the term *systemic complaint* and provides examples of systemic complaint allegations. It establishes a Systemic Complaint Investigation Request model form, as well as procedures for processing and investigating systemic complaints that vary only slightly from the procedures outlined in the Special Education Complaint Investigation Procedures, dated December 8, 2008. This policy, the form, and the related procedures are designed to facilitate the efficient and timely processing, investigation, and resolution of systemic complaint violations.