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State & Federal Policy

Transitions

Other

Formerly published with the title, "Know the Basics about Common Complaint Procedures and the Steps to Take to Avoid Disputes between Parents and Staff"

GATA 03-03

Know the Basics about Complaints Regarding Employee Qualifications, Skills, and Conduct

by Ron Greiner

Every year, the Office of Special Education and Early Intervention Services (OSE/EIS) and intermediate school districts (ISDs) investigate a number of formal complaints about employee qualifications, skills, and conduct. These complaints relate to the experiences, training, or conduct of school district and public school academy (PSA) employees who work with children with disabilities.

Complaints of this kind may target:

- Administrators (general or special education).
- Special education teachers.
- Special education related service providers.
- Special education paraprofessionals.

This publication will help parents and school district personnel understand how these types of complaints are handled at the district, ISD, and state levels. The information presented here will inform the reader about the rules and regulations that apply to these types of complaints and offer case examples showing how investigations are conducted. In addition, schools will find advice about how to avoid these types of complaints and comply with Michigan's *Revised Administrative Rules for Special Education*.

Q: What types of complaints are filed about skills and conduct?

A: Most complaints about employee qualifications, skills, and conduct are

filed by parents, although there have been occasions when a school district employee filed a complaint against the district. Parents file three general types of complaints alleging that:

- An employee is not well trained and lacks the necessary skills to work with their child.
- An employee is rude or discriminatory while working with their child or interacting with the parent.
- An employee has abused their child.

Q: Where does an investigator start when a complaint concerns a special education teacher's qualifications, training, or skills?

A: Investigators turn first to the state professional certification records when looking into a formal complaint about a teacher's training, skills, or qualifications.

Investigators look at these records to answer two questions. First, they ask how the district reported the special education teacher's classroom during the relevant year. Second, they ask whether the special education teacher's assignment to the classroom is consistent with his/her endorsement.

In Michigan, the skills, training, qualifications, and personal characteristics required of each different type of special education teacher are identified in Michigan's *Revised Administrative Rules for Special Education*. (See Figure 1 for a description of the process for becoming endorsed as a special education teacher.) In the fall,

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GATA 03-03

school districts, including PSAs, are required to assign each special education teacher to a particular program for that school year and report that program assignment to the ISD and the Michigan Department of Education (MDE). Typical program assignments include teaching in a resource room program or in a categorical program, for example, a program for students with emotional impairment (EI). [Assignment as a teacher consultant (TC) either full- or part-time will be discussed in the section about related service providers.]

The teacher's program assignment must match the teacher's endorsement. For example, only a teacher with an EI endorsement can teach in an EI program. A district can assign teachers with multiple special education endorsements full-time to one program or part-time to several programs. For example, a teacher with endorsements in both EI and learning disabilities (LD) might work half-time in an EI program and half-time in a program for students with LD.

Investigators may find that the district has violated the Rules in one of three ways:

- Placing the student with a teacher whose program assignment does not match what is required by the Individualized Education Program (IEP).
- Changing the program assignment of a teacher with multiple endorsements/approvals from one year to the next, but then failing to change the type of special education program on the IEPs of the students assigned to the teacher.
- Failing to follow the procedures for temporary approvals when it was unable to find a qualified candidate to fill a vacancy.

Figure 1

How Does a Teacher Receive Special Education Certification?

The example pertains to a teacher of students with emotional impairment, but a similar process is in place for each type of special education teacher.

Rules 340.1781, 340.1782, and 340.1787 of Michigan's *Revised Administrative Rules for Special Education* identify the skills, training, qualifications, and personal characteristics that are required for endorsement as a teacher of students with emotional impairment (EI). Universities that train prospective teachers in a specific disability area (e.g., EI) are required to have that training program approved by the Michigan Department of Education (MDE).

When a candidate completes this specific training program, the university informs the MDE that the candidate has completed the training program (e.g., EI). At the same time, the university also assures that the candidate has mastered the required skills and possesses the required personal characteristics. The university recommends that the candidate receive an endorsement in the area in which the candidate was trained (e.g., EI). The MDE adds the endorsement (e.g., EI) to the candidate's teaching certificate. This endorsement indicates that the holder is qualified and trained to teach in a specific program (e.g., EI).

Q: Where does an investigator start when a complaint concerns a special education related service provider's qualifications, training, or skills?

A: An investigation of a service provider's "skills" comes down to whether he or she has the proper license, approval, or certificate required by various regulations. Therefore, the investigator begins by reviewing the service provider's credentials to see if he or she is properly licensed/approved/certified and if the student's IEP requires the related service. Several types of related service providers work in Michigan's schools: teacher consultants (TCs), occupational therapists (OTs), physical therapists (PTs), school psychologists, school social workers (SSWs), and school nurses. (See Figure 2.)

Figure 2

Licensure, Approval, or Certification of Service Providers

OTs, PTs, and school nurses are licensed by the state. TCs are approved by the MDE. Psychologists who work in school districts must be fully licensed or certified by the MDE as school psychologists. Social workers must have master's degrees in social work and approvals from the MDE as school social workers. Several universities offer social worker training programs that provide coursework related to school settings and internships within school settings. When the candidate completes the program, the university informs the MDE, and the MDE issues an approval, which indicates that the person is an approved school social worker.

Districts can either directly employ related service providers or contract with them. Also, districts can assign a TC to work full-time as a TC, or part-time as a TC and part-time in a classroom program, provided his or her endorsement matches the program. Any TC can implement an IEP, unless the IEP requires a specific type of TC (for example, if the IEP says, "TC - EI").

Investigators may find the school has violated the Rules in one of several ways:

- Assigning a social worker or psychologist who does not have the proper approval or certificate to work with students in special education.
- Employing a social worker or a psychologist who is not approved/certified as a school social worker or a school psychologist to work with general education students and then assigning him or her some special education responsibilities (for example, evaluating students suspected of having an emotional impairment or implementing IEPs).
(See Example in sidebar at right.)

Q: Where does an investigator start when a complaint concerns the qualifications, training, or skills of sign language interpreters?

A: The investigator begins by reviewing Rule 340.1793a (see Figure 3), the district's employee records, and the IEPs of any students involved.

Two recent complaints said that interpreters did not meet any of the standards in Rule 340.1793a. The first complaint was filed by a parent and raised concerns about the qualifications of the interpreter assigned to a student in the program for students with hearing impairment (HI). Because the ISD operated the HI program, the ISD hired an independent investigator. He reviewed the current IEP. It required an interpreter when the student was not in the HI program. He also reviewed the interpreter's credentials and found no violation, because the interpreter had completed the proper program at Mott Community College (MCC).

On appeal, the parent raised two new allegations: the four interpreters assigned to the student during the previous years

Example to Illustrate a Complaint about a Service Provider

A parent alleged that assessment and consultation did not constitute "occupational therapy." The parent felt that the OT spent too much time assessing the student and consulting with the parent and not enough time working with the student.

The ISD investigation reviewed the OT's licensure and noted that it was up-to-date. Next, the investigator used Rule 340.1701b(d), which clarifies that "occupational therapy" is therapy provided by a licensed OT. She concluded that because the OT was licensed, her interventions with the student were, by definition, occupational therapy, and therefore there was no violation.

The parent appealed for a state investigation. The OSE/EIS reviewed the facts. The OSE/EIS noted that there was no specific wording on the IEP that precisely defined what was supposed to happen during an OT intervention. The OSE/EIS agreed with the ISD and found no regulatory standard for deciding what qualified as "occupational therapy," other than it being an intervention provided by a licensed OT.

Figure 3

Rule 340.1793a covers the qualifications, training and skills for sign language interpreters. Rule 340.1793a identifies three sets of qualifications:

1. Those who have been certified by either The National Association for the Deaf and The Registry of Interpreters for the Deaf.
2. Those who have been approved at quality assurance (QA) II or III levels. These interpreters have passed a competency exam offered by the Division on Deaf and Hard of Hearing (DODHH) and have kept their credentials updated (every four years from date of issue).
3. Those who combine high school graduation (or equivalent) with a degree from an MDE-approved training program at a community college, agency, or degree-granting institution [Mott Community College (MCC), Lansing Community College (LCC), and Madonna University (MU)].



- ▼ State Quality Assurance (QA) Levels Descriptions

QA III—Intermediate Skill Level: demonstrated ability to interpret/transliterate communication between hearing and deaf or hard of hearing persons with a minimum of 88% accuracy.

QA II—Limited Skill Level: demonstrated ability to interpret/transliterate communication between hearing and deaf or hard of hearing persons with a minimum of 74% accuracy.

QA I—Restricted Skill Level: demonstrated ability to interpret/transliterate communication between hearing and deaf or hard of hearing persons with a minimum of 60% accuracy.

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▼ Prior to the Rules promulgation of June 6, 2002, Rules 340.1793 (requiring ISD plans to identify qualifications) and 340.1794 (identifying qualifications of instructional aides in programs for students with severe mental impairment, trainable mental impairment, and severe multiple impairment) identified the minimum qualifications. On June 6, 2002, Rule 340.1794 was deleted and Rule 340.1793 was revised. Now, Rule 340.1793 requires the ISD plan to identify the qualifications of ALL paraprofessionals working with students with disabilities.



GATA 03-03

were not qualified, and the teacher assigned to the HI program could not sign.

The OSE/EIS reviewed the credentials of the four interpreters assigned to the student for the previous three years. The OSE/EIS also contacted registrars at MCC and Lansing Community College (LCC) and the coordinator at the Division on Deaf and Hard of Hearing (DODHH) to verify credentials. The DODHH coordinator commented that the DODHH maintains a registry of two types of sign language interpreters: those certified nationally and those who have demonstrated QA I, II, and III levels▼. He indicated that the DODHH does not maintain a list of interpreters who have graduated from LCC, MCC, or Madonna University (MU).

The OSE/EIS found a violation because only one of the four interpreters working with the child was actually qualified. This was the interpreter who completed the MCC program. Of the other three, one had only a QA I rating, and two had simply attended workshops on interpreting. As to whether the HI teacher was required to sign, the OSE/EIS reviewed rules related to HI teacher qualifications. The OSE/EIS found no violation, since these rules do not require HI teachers to be able to use sign language.

In the second complaint, an advocate questioned the qualifications of five sign language interpreters in an HI center program. The ISD reviewed the qualifications of the five interpreters during the previous three years. The ISD investigation found violations because three of the individuals did not renew QA II and QA III levels when they lapsed. The ISD did not find violations for two individuals. [One completed an Associate of Arts (AA) program in deaf studies at MU; the other completed a Bachelor of Arts (BA) program in deaf studies at MU.]

The advocate then requested a state investigation. The advocate said that the MDE approved the BA program in deaf studies at MU, but not the AA program. This meant the person with the AA degree from MU could not be a qualified sign language interpreter. The advocate

also raised a new concern about the qualifications of a sixth interpreter, who received a BA degree from MU in the 1970s.

The OSE/EIS interviewed the chair of MU's sign language studies program. He confirmed that MU offers several sign language studies programs, but the MDE-approved one requires, in most circumstances, a BA degree, not an AA degree. He also confirmed that the individual who received a BA degree in the 1970s did not demonstrate the competencies that the MDE established in November of 1988. The OSE/EIS also noted that the November 1988 document stated that candidates must complete an approved program in order to be a sign language interpreter. The OSE/EIS found that these two individuals were not qualified according to the Rules.

Q: Where does an investigator start when a complaint concerns a special education paraprofessional's qualifications, training, or skills?

A: An investigator begins by reviewing the IEP to see how it describes paraprofessional support. He or she also checks the ISD plan to see whether the paraprofessional's qualifications match the requirements identified in the ISD plan. (Michigan's *Revised Administrative Rules for Special Education* require each ISD plan to describe qualifications of paraprofessionals▼.) The investigator may also review school records and interview the parties involved.

A special education paraprofessional is an individual who works under the supervision of a professional, and whose pay is reimbursed (entirely or partially) from money dedicated to students with disabilities. Districts have described special education paraprofessionals in a variety of ways, including: teaching assistants, mandated aides, non-mandated aides, health care aides, least restrictive environment (LRE) aides, one-to-one student aides, program assistants. As a result, different criteria have been developed to describe the qualifications of the different types of paraprofessionals.

Complaints filed against paraprofessionals generally allege that a specific paraprofessional is not qualified, is not trained, or does not have the necessary skills to implement a child’s IEP. (See Example below.)

Q: How are complaints about the behavior of school district employees investigated?

A: Parents have filed several complaints accusing district employees of acting

unprofessionally. A first example involves a parent who complained that a principal retaliated against him after the parent raised concerns about a first-year special education teacher’s classroom management techniques. The parent claimed the principal called the police without cause for an incident involving the student.

A second example involved a parent who felt that the superintendent had threatened her. The parent claimed that the district had suspended her child for five days

▼▼▼Rule 340.1793

Paraprofessional personnel; qualifications. Rule 93.

Paraprofessional personnel employed in special education programs shall be qualified under requirements established by their respective intermediate school district plan. Paraprofessional personnel include, but are not limited to, teacher aides, health care aides, bilingual aides, instructional aides, and program assistants in programs for students with cognitive impairment or severe multiple impairments.

Example

Examples of How Allegations about Paraprofessionals Might Be Addressed

1. A parent filed several different complaints over the course of a year involving a paraprofessional employed by a public school academy (PSA). The parent alleged that the student’s one-on-one paraprofessional could not meet a strength requirement in a student’s IEP and did not have the qualifications required by the ISD plan.

The ISD investigator reviewed the student’s IEP, which stated that the paraprofessional assigned to the student had to be able to lift 40 pounds. The investigator reviewed the ISD plan and noted that it required that paraprofessionals possess a high school diploma. Through interviews, the investigator learned that the paraprofessional could not lift 40 pounds nor did he have a high school diploma. The investigator properly found that the PSA violated Rule 340.1793▼▼▼ and did not implement the IEP when it employed a paraprofessional who did not have a high school diploma. The PSA was directed to employ a paraprofessional whose skills and qualifications matched the IEP and the ISD plan.

2. A parent complained that a local school district had assigned a custodian to a student with disabilities. The ISD investigator concluded that the district did not violate any standard because one of the district’s employee bargaining units included custodial and paraprofessional staff, and the master agreement allowed employees to bump into vacant positions. The parent appealed and requested a state investigation.

The OSE/EIS investigator reviewed the ISD plan and noted that it:

- Explicitly identified the qualifications for all “newly employed” ISD paraprofessionals.
- Was silent about the qualifications for ISD paraprofessionals who were not newly employed.
- Was silent about the qualifications for paraprofessionals employed by local school districts or PSAs that were within the boundaries of the ISD.

The OSE/EIS investigation report reversed the ISD investigation and concluded that the district violated Rule 340.1793▼▼▼ for employing a paraprofessional whose qualifications were not identified in the ISD Plan. OSE/EIS also ruled that the ISD was in violation because the ISD Plan did not specify the qualifications of all paraprofessionals. The OSE/EIS directed the ISD to modify the ISD Plan to address the deficiencies (i.e., the plan did not identify the qualifications of local school district/PSA paraprofessionals and ISD paraprofessionals who were not new employees) and to describe clearly the qualifications of all special education paraprofessionals, including those employed by local school districts and PSAs.



▼▼▼ Rule 340.1701a (c)

“Complaint” means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:

(i) Any current provision of these rules.

(ii) 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services.

(iii) The individuals with disabilities education act of 1997, 20 U.S.C., chapter 33, §1400 et seq., and the regulations implementing the act, 34 C.F.R. part 300.

(iv) An intermediate school district plan.

(v) An individualized education program team report, hearing officer decision, or court decision regarding special education programs or services.

(vi) The state application for federal funds under the individuals with disabilities education act.

after threatening another student. She questioned the district’s suspension procedures and demanded that the district withdraw the suspension. The superintendent answered in writing, offering to lengthen the suspension if the parent was unhappy.

Finally, a parent felt that a principal’s questions about her need for the family subsidy invaded her privacy. The parent reported that the principal, on two occasions, publicly asked if needing the subsidy was the reason she wanted an autism label for her child.

In each case, the ISD investigators reviewed the definition of a complaint in the Rules▼▼▼. They noted that allegations about employee conduct were not covered under that definition. In other words, no matter how offended a parent might feel, the investigator had no authority under special education law to decide who was right and who was wrong. Because the allegations did not meet the definition of a special education complaint, the ISD dismissed them.

The complainants appealed for state investigations. The OSE/EIS interviewed

Example

Examples of Allegations of Suspected Abuse

1. A parent accused ISD district employees of abusing a student with a disability. The ISD hired an independent investigator who interviewed the parent. The parent claimed that an ISD teacher had abused the student over a period of several years. He therefore contended that the ISD did not protect the student from “harmful effects.”

The independent investigator had no authority under Rule 340.1701a (c)▼▼▼ to rule on suspected abuse; however, his investigation report noted that a police report had been filed on the matter and that the teacher had recently retired. The independent investigator concluded that there was no special education regulation that applied to this type of complaint.

The parent appealed for a state investigation. The OSE/EIS interviewed the parent and reviewed the IEPs that placed the student into the classroom. The IEPs did not refer to behavior intervention plans that might have described intervention strategies. Also, the IEPs did not contain any goals and objectives that related to behavior management. Each IEP contained an assurance that the ISD, in making the assignment, considered any harmful effects.

The OSE/EIS agreed with the ISD ruling. The OSE/EIS also concluded that the ISD’s assurance about harmful effects was intended to represent the ISD’s review of any known information. It did not constitute an absolute guarantee that nothing harmful would occur.

2. In another case, an attorney, acting on behalf of the student, filed a civil action in federal district court. The lawsuit accused an ISD teacher of physically assaulting the student. The judge ordered the attorney to first exhaust administrative remedies under special education. The attorney filed a complaint with the ISD and the OSE/EIS. The ISD hired an independent investigator, who found there was no violation of any special education regulations.

The attorney then requested a state investigation. The OSE/EIS interviewed the attorney, the principal, and the teacher and reviewed the IEP and the ISD internal report. The internal report indicated that although the teacher might have used questionable judgment, the teacher’s actions were an attempt to implement the IEP. The OSE/EIS noted that the IEP neither prohibited nor required the teacher’s behavior. Therefore, the OSE/EIS concluded that the allegation did not meet the definition of a special education complaint.



the parents and the involved school district personnel and reviewed documents. The OSE/EIS ruled that the proper way to raise concerns about the conduct of district employees is with the administrators or board of education. Further, the OSE/EIS concluded that even if the behavior occurred as reported by the parent, and even if the behavior in some way lacked professionalism, allegations about a lack of professionalism did not fall under the items listed in the definition of a special education complaint.

Q: How do investigators handle complaints about suspected abuse?

A: Parents have occasionally filed complaints that allege that a school district

employee has abused a student with disabilities. In most instances, investigators inform the parent that the special education complaint process is not the correct process to handle allegations of suspected abuse. (See Examples on page 6.)

The correct process for addressing most allegations of suspected abuse is identified in the *Michigan Child Protection Law* (Act 238 of 1975). Referrals made to Children’s Protective Services must be addressed through very specific procedures and timelines. A second option is to bring an allegation of suspected abuse to a law enforcement agency (police or sheriff).

The OSE/EIS is providing information in this feature with a reminder that each due process hearing decision and each complaint investigation decision is based solely on factual circumstances, as presented in individual cases. Specific cases presented here should not be the basis of generalizations about dispute resolution.

Local and Intermediate School Districts and Public School Academies Can Take Steps to Avoid Complaints

Schools can help to reduce the number of complaints about employee skills and conduct in several ways. First, districts should **review their personnel procedures** and make sure they include the following steps:

- Carefully screen employee credentials and identify the roles that each employee can fulfill.
- Identify when employee credentials expire and/or must be renewed.
- Establish processes to inform district staff when their credentials must be updated, how to update them, and that they must maintain their credentials in order to stay employed.
- Annually review each staff member’s credential status.
- Annually monitor each staff member’s assignments.

Second, districts should **review the credentials, qualifications, and assignments of individuals who will work with students**. The best time to do this is when developing a student’s IEP.

Third, educators should consider that parents who file these types of complaints are simply concerned about the quality of the relationships between their children

and the people who work with them. For that reason, districts will want to **develop a system where issues and concerns can surface** before they become formal complaints:

- Provide ample opportunities for parents to interact with and become acquainted with the adults in their children’s lives.
- Work closely with parents to involve and update them about any unusual incidents.
- Develop a system where issues and concerns can surface before they become formal allegations and complaints.
- Make sure both district personnel and parents understand how allegations are handled at the district, ISD, and state levels.
- Provide information about the procedures for filing complaints, the process by which complaints are investigated, and what actions parents can take when they are not satisfied with the outcomes of an investigation.

Many formal complaints can be avoided where lines of communication are open between parents and the school district and there is a constructive way to work through conflicts.



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GATA 03-03

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Dispute Resolution Web Sites

Consortium for Appropriate Dispute Resolution in Special Education (CADRE)

www.directionservice.org/cadre

Michigan Special Education Mediation Program (MSEMP)

Michigan Supreme Court, State Court Administrative Office,
Office of Dispute Resolution

www.courts.michigan.gov/scao/dispute

mediate.com

www.mediate.com

American Bar Association Network

www.abanet.org/dispute/home.html

Association for Conflict Resolution

www.acresolution.org

National Special Education Web Sites with Dispute Resolution Pages

National Association of State Directors of Special Education (NASDSE)

www.nasdse.org

National Information Center for Children and Youth with Disabilities (NICHCY)

www.nichcy.org

Technical Assistance Alliance for Parent Centers (The Alliance)

www.taalliance.org

U.S. Department of Education, Office of Special Education Programs (OSEP)

www.ed.gov/offices/OSERS/OSEP/

Michigan Special Education Web Sites

Citizens Alliance to Uphold Special Education (CAUSE) Michigan's designated parent training and information center

www.causeonline.org/

Center for Educational Networking (CEN)

www.cenmi.org

Michigan Department of Education

(Click on Administrators, then Special Education)

www.michigan.gov/mde/