BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 10.16.3122, 10.16.3346, 10.16.3505, 10.16.3508, 10.16.3509 through 10.16.3513, 10.16.3518, 10.16.3520, 10.16.3523, 10.16.3560, 10.16.3660 through 10.16.3662; and repeal of 10.16.3514, 10.16.3515, 10.16.3517, and 10.16.3571 pertaining to special education	)))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 15, 2015, the Superintendent of Public Instruction published MAR Notice No. 10-16-124 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1578 of the 2015 Montana Administrative Register, Issue Number 19.

2. The Superintendent has amended ARM 10.16.3122, 10.16.3346, 10.16.3512, 10.16.3518, 10.16.3560, and 10.16.3661 as proposed.

3. ARM 10.16.3505 is not being amended at this time.

4. The Superintendent has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.16.3508 SPECIAL EDUCATION DUE PROCESS HEARING (1) A parent as defined in 34 CFR 300.30 or public agency as defined in 34 CFR 300.33 may request an impartial due process hearing involving the ~~education or~~ educational placement, evaluation, possible identification of a student with disabilities, or the provision of FAPE to the child. The request shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501. A copy of the request shall be mailed to the other party.

(2) through (4) remain as proposed.

(5) All pleadings ~~and discovery~~ shall be filed with the OPI and served both electronically and by U.S. mail. The time period for any response shall begin on the next business day following electronic service.

10.16.3509 APPOINTMENT OF IMPARTIAL HEARING OFFICER

(1) remains as proposed.

(a) promptly advise the ~~LEA and~~ public agency, parent, ~~legal guardian,~~ or ~~surrogate parent~~ other parties as identified in ARM 10.16.3508(1) of the request for due process hearing; and

(b) and (b)(i) remain as proposed.

(ii) Upon receiving a request for hearing, the Superintendent of Public Instruction shall mail to each party a list of the names of three proposed impartial hearing officers together with a summary of their qualifications ~~appoint an impartial hearing officer from the maintained list of qualified, available, impartial hearing officers~~.

(iii) Each party shall have three business days to rank the proposed hearing officers on the list in order of preference.

(iv) The Superintendent of Public Instruction shall make the appointment from the names ranked by the parties.

(2) remains as proposed.

(3) A party may submit one written request to the Superintendent of Public Instruction to remove an appointed impartial hearing officer for personal or professional conflict of interest or bias with a supporting affidavit showing the particular facts which constitute good cause for disqualifying the appointed hearing officer. Such a request may be made within ten days of the appointment of the hearing officer. The decision of the Superintendent is final and not subject to interlocutory appeal.

10.16.3510 SCHEDULING CONFERENCE AND NOTICE OF HEARING

(1) and (1)(a) remain as proposed.

(b) a schedule for discovery~~, including~~;

(c) a schedule for identification of expert and lay witnesses and exchange of proposed exhibits~~, prehearing motions and post-hearing legal briefs and/or proposed findings of fact, conclusions of law and order~~;

(d) the extent to which prehearing motions will be allowed, and if allowed, a schedule ensuring such motions do not unnecessarily delay the hearing;

(e) the extent to which post-hearing legal briefs and/or proposed findings of fact, conclusions of law and order will be required;

(c) through (g) remain as proposed but are renumbered (f) through (j).

(2) and (3) remain as proposed.

(4) The dates scheduled by the impartial hearing officer in the notice of hearing may be continued at the hearing officer's discretion after stipulation by all parties or upon motion of a party showing reasonable necessity for the continuance, but in no event beyond 12 months from the date of filing of the due process action. In determining whether to grant a request for continuance, approve a stipulation for continuance, or approve any action which may unduly delay the hearing, the hearing officer shall consider the potential negative impact on the student who is the subject of the hearing, including the impact to the student's right to FAPE due to a delay of the hearing process, and the complexity of the case.

(5) The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named ~~LEA~~ public agency is located.

10.16.3511 ~~CONFERENCE AND~~ INFORMAL DISPOSITION (1) The impartial hearing officer may ~~informally~~ confer with the parties ~~to the request for impartial due process hearing~~ for the purpose of attempting informal disposition of

any special education controversy in addition to the requirements in ARM 10.16.3510 and 10.16.3512.

(2) remains as proposed.

10.16.3513 DISCOVERY (1) The impartial hearing officer may compel or limit discovery prior to the hearing and/or prehearing conference ~~pursuant to ARM 10.16.3514 through 10.16.3516~~.

(2) through (5) remain as proposed.

10.16.3520 POWERS OF THE IMPARTIAL HEARING OFFICER

(1) through (1)(b) remain as proposed.

(c) upon request of a party, as deemed ~~necessary~~ appropriate by the hearing officer, allow for the taking of testimony by video, audio, or depositions of witnesses who will not be available for the hearing, ~~including video or audio testimony of a witness who is unavailable~~ or when procurement of the witness in person at the hearing will be unduly costly and burdensome for a party~~, without causing unreasonable delay of the proceedings~~;

(d) through (f) remain as proposed.

(2) The impartial hearing officer shall be bound by common law and the Montana Rules of Evidence, except as provided by these rules. ~~Evidence, including hearsay evidence, is admissible if the impartial hearing officer deems it to be reasonable, appropriate, and reliable.~~ All evidence and objections to evidence shall be noted in the record.

(3) ~~Documents or other evidence regarding~~ Educational records of the student who is the subject of the proceeding ~~or his or her parents contained in the LEA or public agency's educational records~~ as defined in the ~~Federal Educational Rights and Privacy Act (~~FERPA~~),~~ and its implementing regulations at 34 CFR 99, shall be allowed as self-authenticating, and shall require no extrinsic evidence of authenticity as a condition precedent to admissibility.

(4) remains as proposed.

10.16.3523 FINAL ORDER ON SPECIAL EDUCATION DUE PROCESS HEARING DECISIONS (1) through (6) remain as proposed.

~~(7) A court of competent jurisdiction may award reasonable attorneys' fees to a prevailing party in accordance with 34 CFR 300.517.~~

(8) remains as proposed but is renumbered (7).

10.16.3660 EARLY ASSISTANCE PROGRAM (1) remains as proposed.

(2) A parent, guardian, adult student, LEA or other public agency as defined in 34 CFR 300.33, or their representative may request early assistance in any issue related to a student's free appropriate public education or any violation of Part B of the IDEA, 20 U.S.C. 1400, et seq., or Montana special education laws, Title 20, chapter 7, MCA, and corresponding regulations at 34 CFR Part 300 and ARM 10.15.3007, et seq. ~~The Early Assistance Program does not require formal, written application. Request for early assistance may be made in writing to the Superintendent of Public Instruction, Legal Division-Dispute Resolution Office, P.O. Box 202501, Helena, MT 59620-2501.~~ Assistance may be requested by contacting

the Office of Public Instruction Legal Division Dispute Resolution Office.

(3) and (4) remain as proposed.

10.16.3662 STATE COMPLAINT PROCEDURES (1) An organization or individual may file a written signed complaint alleging the LEA or public agency as defined in 34 CFR 300.33 violated the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA), or the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

(2) and (2)(a) remain as proposed.

(b) state the name and address of the affected child, if applicable, and the name of the school or public agency where the violation allegedly occurred;

(c) through (e) remain as proposed.

(3) The complaint must be filed with the OPI Dispute Resolution Office, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501 and a copy provided by the complainant to the LEA, ~~or other party if the complaint is filed by the LEA~~ or public agency serving the child. ~~The dispute resolution office may return the complaint for a more complete statement of the issue and contact the complainant orally or in writing to discuss the details of the complaint before acceptance and filing of the complaint.~~ An insufficient complaint not meeting the requirements in (2) may be returned to the complainant.

(4) Within ten calendar days of filing, the dispute resolution office shall send written notice to the complainant and the LEA or public agency that a complaint has been filed.

(a) through (10) remain as proposed.

(11) If within the timelines identified in the Final Report ~~one year of issuance of the final report,~~ the LEA has not implemented the corrective action required by the final report, the Superintendent of Public Instruction shall take appropriate sanctions against the local educational or public agency. Such sanctions may include:

(a) through (c) remain as proposed.

(12) Prior to implementing the final report order, and prior to implementing sanctions against the LEA or public agency, and if the LEA or public agency alleges that the office has violated a state or federal special education statute, regulation, or rule in ordering the corrective action required by the final report, the Superintendent of Public Instruction shall provide the local educational or public agency with a hearing in accordance with 34 CFR 76.401, and the Montana Administrative Procedure Act, 2-4-601 through 2-4-711, MCA.

(13) remains as proposed.

5. The Superintendent has repealed ARM 10.16.3514, 10.16.3515, 10.16.3517, and 10.16.3571 as proposed.

6. The Superintendent has thoroughly considered the comments and testimony received. A summary of the comments received and the Superintendent's response are as follows:

ARM 10.16.3122

COMMENT 1: Disability Rights Montana (DRM) objected to the amendment related to residency, but recognized that it would require legislation for statutory amendments to effect any real change to the residency requirements for enrollment of a special education student in a school district. Concern was raised about relying on the residency statute in 1-1-215, MCA, when parents are divorced and in cases where a child is a ward of the state.

COMMENT 2: Private attorney Andrée Larose expressed general agreement with DRM comments regarding residency, but added that there should be a review of school district obligations under state and federal law before amending the rule and stated that ARM 10.16.3341 also needed to be revised.

COMMENT 3: Other commenters opposed changes to this rule stating it would lead to situations where no school would accept responsibility for the child and force parents to sue districts to determine responsibility. One commenter stated the rule is working fine and that there is no data to support a change.

COMMENT 4: Michael O'Neil on behalf of AWARE, Inc. (AWARE) opposed the change to residency requirements stating this amendment would have negative consequences for a variety of students living outside of their district of residence and for those living in licensed group homes. He believes the change would create uncertainty, may cause discrimination against students with disabilities, and potentially create barriers to students receiving the services they need. He also asked many questions related to interpretation of the rule.

COMMENT 5: The advocacy group Parent's Let's Unite for Kids (PLUK) stated that restricting the residency definition would be a conflict with the districts' child find duty and the duties under the McKinney-Vento Homeless Act.

RESPONSE: Superintendent Juneau thanks all commenters for the comments. This amendment, however, is necessary to avoid conflicting with law, and does not alter the state and federal laws which address enrollment of special education students. Section 20-7-420, MCA specifically states "… a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215." This statutory requirement controls over the conflicting administrative rule.

The McKinney-Vento Homeless Act (Public Law 100-77) has a broad definition of homelessness, requires admission to school of a homeless student, and would control over a Montana administrative rule. With respect to concerns regarding students in foster or group homes, 20-5-321, MCA, requires mandatory out-of-district attendance agreements allowing a student to enroll in a school district outside of the student's school district of residence for children under the protective care of the state, adjudicated to be a youth in need of intervention or delinquent, or living in foster homes or group homes licensed by the state. Section 20-9-130, MCA, addresses the responsibility of districts when a student is in a detention

facility. Caretaker relative placements are addressed in 20-5-501 through 20-5-503, MCA, allowing enrollment of a student living with relatives other than a parent or guardian. This myriad of state and federal laws addresses special education students enrolling in out-of-district schools. When a situation arises that is not covered by these other laws, the residency statute (1-1-215, MCA) controls over conflicting language in an administrative rule. The existing language causes more confusion than clarity, is superseded by law, and, as such, the rule will be amended as proposed.

Changes to ARM 10.16.3341 cannot be considered at this time because they were not part of the original notice. Further, it is not appropriate to answer questions on interpretation of rule in this, or other responses.

ARM 10.16.3346

COMMENT 6: Andrée Larose stated that she supported the proposed correction to the error in (9), but offered suggested changes to other sections of the rule that were not contemplated in the proposed rule notice.

COMMENT 7: AWARE stated support for this amendment correcting a typo.

COMMENT 8: DRM is opposed to all physical restraint of students and requested the rule be amended to disallow this practice, or if allowed, that it be allowed only when implemented by fully trained staff in appropriate MANDT or other approved restraint methods, and that no prone restraint or restraint in which staff lie on top of a student be allowed.

RESPONSE: Superintendent Juneau thanks the commenters for the comments but will amend the rule as proposed to correct the error. The OPI plans to engage stakeholders in a more broad discussion regarding seclusion and restraint before proposing further amendments to this rule.

ARM 10.16.3505

COMMENT 9: Many oral and written comments were received from parents, educators, advocacy groups, three Montana legislators, and other entities raising concerns and often objecting to the proposed amendments to the procedure for addressing parental disagreement with an annual renewal of a student's IEP. Many commenters were concerned the new language was not supportive of parental involvement, parents were being left out of the process, and districts were being given too much power. Commenters expressed concern that the change would force parents and schools into an adversarial process, shifted the balance, and a due process hearing would be a financial burden most parents could not afford. Some parents indicated the problem was not with lack of parent response but lack of response to parental concerns by school districts; districts could use this as a means to avoid providing services; and districts do not give parents any credibility for their knowledge about their children.

Commenters stated that even for well-educated parents, the task of going into

the IEP meeting to advocate for their child was daunting; some parents would feel intimidated by having to provide written comments and favored continued face-to-face meetings; and for less educated parents or those with limited English, it may lead to nonparticipation in the process.

Some commenters expressed the idea that parent consent was critical to ensuring the integrity of the IEP and that ignoring their true educational needs was often the cheapest and most expedient way for districts to go.

Some commenters proposed options to implement parts of IEPs that were agreed upon while continuing to negotiate the parts that were not agreeable.

PLUK provided many comments in general agreement with other comments and also stated the rule amendments would escalate adversarial relationships and would pose additional problems for parents who are isolated due to low literacy, disability, poverty, or live in isolated rural areas.

Several commenters asked whether there was data showing a need for the change.

AWARE opposed the proposed rule change asserting parental consent and involvement are fundamental to the IEP process; that the change would allow districts to implement IEPs in direct opposition to parents' wishes; could open up potentially destructive inconsistencies in approach and practice between school and home; and that the changes shift the power in the IEP process away from families and leaves school district responsibilities ambiguous and undefined.

Gary Mihelish, on behalf of the National Alliance on Mental Illness Helena (NAMI), suggested the changes were contrary to the spirit of the IDEA which is to encourage parental involvement.

Montana Association of School District Attorneys (MASDA) and a group of special education directors and special education cooperatives commented that the proposed changes would increase procedural requirements for school districts. MASDA requested additional time be provided to parents to consider a newly proposed IEP before a prior written notice is sent. These commenters support the revisions to the extent they will permit school districts to implement new annual IEPs when parents refuse to sign but object to the burden of the additional procedural safeguards. They are also concerned that the rule amendments will result in a more adversarial process.

Concern was raised by several commenters that the "reasonable amount of time" requirement is too vague. Comments were submitted that providing definite time frames in which parties had to respond to the other would be helpful.

Alternative language was proposed by several commenters.

RESPONSE: Superintendent Juneau thanks all the commenters and expresses great appreciation for the thoughtful and considerate written comments and those made at the public hearing.

The proposed draft language attempted to provide a balanced process for school districts to implement an IEP annual renewal and offer an appropriate education to a student when parental consent to an annual renewal of an IEP could not be obtained. The U.S. Department of Education provided comments on the parental consent provision of the IDEA, 73 Fed. Reg. 73011(2008) stating: "States are free to create additional parental consent rights, such as requiring parental

consent for particular services, or allowing parents to revoke consent for particular services, but in those cases, the State must ensure that each public agency in the State has effective procedures to ensure that the parents' exercise of these rights does not result in a failure to provide FAPE to the child."

The proposed amendments are consistent with the requirements of the IDEA and were intended to address situations when an LEA may become out of compliance with federal law if a student's educational program could not be appropriately revised and implemented, and to ensure that special education students continued to receive an appropriate education when disagreement arose.

The OPI recognizes parental participation as critical to the IEP development process, and the proposed rule amendments did not remove parents from fully participating with development of their child's annual IEPs. However, given the volume of expressed concerns and opposition to the rule amendments, this proposed amendment will be removed from consideration at this time and the existing language of ARM 10.16.3505 will remain.

ARM 10.16.3508

COMMENT 10: Andrée Larose requested that (1) be revised to state: "A parent as defined in 34 CFR 300.30, a public agency as defined in 34 CFR 300.33, or individuals to whom parental rights have been transferred pursuant to 34 CFR 300.520 may request an impartial due process hearing..." and also requested changes to (2) including the requirement that the OPI develop a model due process complaint request form and make it readily available to the public, and requested that (6) be added providing: "Only those individuals or agencies identified in (1) of this rule are proper parties to an impartial due process hearing."

RESPONSE: Superintendent Juneau thanks this commenter for the comments. With regard to the comments on (1), the proposed rule has been amended to include the federal citation in the definition of "parent." 34 CFR 300.507 states a parent or public agency may file a due process complaint. All parental rights under the IDEA transfer to students when they turn 18 (ARM 10.16.3502). No further clarification is necessary within this rule.

With regard to the comment on (2), the OPI has a model form readily available to the public. Receiving the form from the Legal Division is consistent with the OPI and IDEA emphasis on dispute resolution.

With regard to the proposed addition of a new (6), the OPI believes it is clearly set out in (1) and 34 CFR 300.507(a)(1) who may file a complaint and upon what matters a complaint may be filed. The OPI will not be adding any further requirements at this time.

COMMENT 11: A due process hearing officer commented with regard to (1), suggesting that the party filing the request for a hearing, or any other pleadings, should be required to certify that a copy has been mailed to the other party. With regard to (4), the commenter suggested that the language "and if required, the LEA must send prior written notice" is unclear. With regard to (5), the suggestion was made that all time periods be calculated in accordance with the Montana Rules of

Civil Procedure, and asking for clarification of who pleadings are filed with and whether they can be filed only electronically.

RESPONSE: The rule will require that a party must mail a copy of a due process hearing request to the other party. Adding a requirement that the mailing must be certified adds unnecessary legal complexity for a potential pro se party.

The entirety of (4) is consistent and helps ensure compliance with an overlooked requirement of IDEA.

Section (5) has been amended, deleting reference to discovery, but retaining the filing of pleadings both electronically and by mail. IDEA has specific, shortened timeframes which are not consistent with the Montana Rules of Civil Procedure time periods.

COMMENT 12: AWARE stated that the proposed changes to this rule could prove challenging and may cause inequities for families with fewer resources.

RESPONSE: The Superintendent thanks the commenter for the comment, but has no specific response to address this concern which appears to be outside of the scope of the rule amendments.

ARM 10.16.3509

COMMENT 13: Several comments were received objecting to the removal of the strike list process for selecting an impartial hearing officer, and suggested providing a means for a party to request removal of an appointed hearing officer. Comments suggested continuing the process for ranking potential hearing officers for a specific case.

COMMENT 14: DRM objected to the proposed changes regarding appointment of a hearing officer without input from the parties, stating that allowing the parties some choice helps retain neutrality, eliminate bias, promote fidelity in the hearing officer's decisions, and keeps families engaged and fully informed throughout the special education process. They also feel proceeding with this amendment will result in more parents requesting review of a due process decision in federal court.

One commenter suggested that (1)(a) should be amended to provide that the Superintendent shall promptly advise "the public agency, parent or other individuals, as identified in ARM 10.16.3508, of the request for due process hearing."

RESPONSE: Superintendent Juneau thanks the commenters for the comments. ARM 10.16.3509 is amended to include a process by which parties to a due process hearing may rank three potential hearing officers and file a motion for removal of a hearing officer. Section (1)(a) has also been amended as suggested.

ARM 10.16.3510

COMMENT 15: A due process hearing officer commented about the

requirement for a prehearing scheduling conference in ARM 10.16.3510 as well as ARM 10.16.2512 would require two prehearing conferences, and regarding (5), suggesting the hearing officer should not be required to defend an extension of time.

Another comment suggested that the hearing officer consider the complexity of the case when issuing an extension of time.

COMMENT 16: A commenter suggested revising (1) to include addressing when the public agency should provide the parent with the child's complete education records without a discovery request.

Consideration of prehearing motions was also commented upon.

RESPONSE: Superintendent Juneau thanks the commenters for the comments.

At least two pre-hearing conferences are contemplated by the rules. The hearing officer does not have to defend a decision for an extension of time, but must consider the ramifications of such an extension on the student at issue. The proposed language related to these two comments will not be changed.

The Superintendent agrees with adding language about consideration of the complexity of a case.

With respect to requiring the public agency to provide a complete copy of the student's records to the other party, the Superintendent does not plan to change the proposed language. Each due process hearing has different issues related to different aspects of a student's education. For the parents to automatically receive a complete copy of a student's education records may not be appropriate in every case.

The Superintendent agrees that pre-hearing motions may cause undue delay in a due process hearing and language has been clarified regarding pre-hearing motions.

ARM 10.16.3511

COMMENT 17: A due process hearing officer commented it was not appropriate for a hearing officer to be allowed to informally confer with the parties.

RESPONSE: Superintendent Juneau thanks the commenter for the comment and has amended the rule for clarification regarding informal resolution of a dispute.

ARM 10.16.3513

COMMENT 18: A commenter pointed out a typo in the proposed rule. The commenter objected to the phrase "within the discretion of the hearing officer" regarding the allowable methods of discovery as he fears it would allow a hearing officer to prohibit discovery completely. The commenter suggests instead referring to the Montana Administrative Procedures Act.

RESPONSE: Superintendent Juneau thanks the commenter for the comments and has corrected the typo. The remainder of the proposed language will

not be amended, however. The language in this rule intends to give the hearing officer discretion to control all aspects of the hearing, including discovery. MAPA does not control due process hearings which are conducted pursuant to federal law (IDEA).

ARM 10.16.3520

COMMENT 19: MASDA raised objections to allowing video or audio testimony of witnesses who are unavailable or whose presence would be costly as being contrary to the IDEA and prejudicial to the rights of all parties, citing a recent court decision from Connecticut. Another commented that the rule should be clear that testimony by video or audio can be taken by deposition and also at the hearing, and another comment suggested alternative language regarding video or audio testimony.

Several comments were received objecting to allowing hearsay evidence.

MASDA also suggested clarifying that educational records as self-authenticating only when such records meet the definition of "education records" in FERPA.

RESPONSE: Superintendent Juneau thanks the commenters for the comments.

Although IDEA provides that the parties to a due process hearing have the right to present evidence, confront, cross-examine, and compel the attendance of witnesses, the U.S. Department of Education has not interpreted this language to exclude telephonic testimony. In Letter to Anonymous, 23 IDELR 1073 (1995), a query specifically related to telephonic testimony, the U.S. Department of Education Office of Special Education Programs stated that decisions regarding the conduct of a due process hearing are left to the discretion of the hearing officer, and the appropriate challenge to the hearing officer's discretion is by appeal. As such, the OPI will clarify when video or telephonic testimony may be considered, but adopt rules leaving this matter up to the discretion of the hearing officer.

The Superintendent agrees that the Montana Rules of Evidence are adequate to address allowable hearsay and the language allowing hearsay evidence has been removed.

ARM 10.16.3523

COMMENT 20: A due process hearing officer questioned whether this rule should be read as including an interlocutory appeal or if this provided an opportunity to bar interlocutory appeals.

AWARE raised concerns that parents may not pursue a due process hearing because of a fear of facing financial ruin if the district were awarded legal fees. They recommended using language generally understandable to the public including pertinent IDEA references that more clearly explains and defines a family's limited risk to being held liable for legal fees.

RESPONSE: Superintendent Juneau thanks the commenters for the

comments and has amended the proposed language for clarity and deleted the reference to attorneys' fees as not necessary in rule.

ARM 10.16.3660

COMMENT 21: Andrée Larose commented that the provisions for initiating early assistance was confusing and requested it be clarified and made easier.

COMMENT 22: AWARE stated the proposed amendments replaced clear, generally understandable language with complex legalese that is incomprehensible without researching legal references and could limit a family's understanding of what EAP services they could access.

RESPONSE: Superintendent Juneau thanks the commenters for their comments and has amended the proposed language for clarity.

ARM 10.16.3662

COMMENT 23: Andrée Larose commented that (1) and in other places in the proposed rules should refer to "public agency," not just "LEA." She also questioned whether the OPI had the authority to establish a filing date vs. a receipt date which could limit the consideration of a violation occurring more than one year before the filing date; requested adding language to provide for extensions based on reasonable necessity rather than "exceptional circumstances"; suggested adding language for the dispute resolution officer to consider the potential negative impact on the student if an extension is requested; objected to allowing a year for corrective actions before sanctions are imposed; and requested a two year look-back period.

DRM also objected to increasing the time for compliance to one year as they feel it would allow a district to continue to deny FAPE for an additional year.

RESPONSE: Superintendent Juneau thanks the commenters for their comments and revised the rule to include "public agency."

Federal rules 34 CFR 300.151-153 refer to "filing" a state complaint, not a receipt date. The rules will retain language regarding "filing" as consistent with federal law and regulation.

Section (3) was revised in order to clarify when a complaint may be returned for insufficient information.

34 CFR 300.152(b) sets out when an extension of time is allowable and specifically states "exceptional circumstances." OPI will retain the heightened standard for allowing a continuance consistent with the federal rule.

The proposed language has been clarified to address concerns regarding the timeline for LEA compliance with required corrective action in a State Complaint Final Report.

The OPI will not be extending the look back period beyond the one year required in 34 CFR 300.153(c). The OPI agrees with the comments to the federal regulations which address concerns with a longer look back period: "we believe a one year timeline is reasonable and will assist in smooth implementation of the State

complaint procedures. The references to longer periods for continuing violations and for compensatory services claims in current 34 CFR 300.662(c) were removed to ensure expedited resolution for public agencies and children with disabilities. Limiting a complaint to a violation that occurred not more than one year prior to the date that the complaint is received will help ensure that problems are raised and addressed promptly so that children receive FAPE. We believe longer time limits are not generally effective and beneficial to the child because the issues in a State complaint become so stale they are unlikely to be resolved." 71 Fed. Reg. 46606 (2006).

COMMENT 24: Several commenters commented on, or offered suggestions for rules not part of the original rule notice. Other commenters asked questions about intent, implementation, or interpretation of rule.

RESPONSE: Superintendent Juneau thanks the commenters about their concern regarding these issues but is unable to address them in this rule notice. These comments will be considered if further amendments to special education rules are considered.

/s/ Ann Gilkey	/s/ Denise Juneau
Ann Gilkey	Denise Juneau
Rule Reviewer	Superintendent of Public Instruction

Certified to the Secretary of State December 14, 2015.