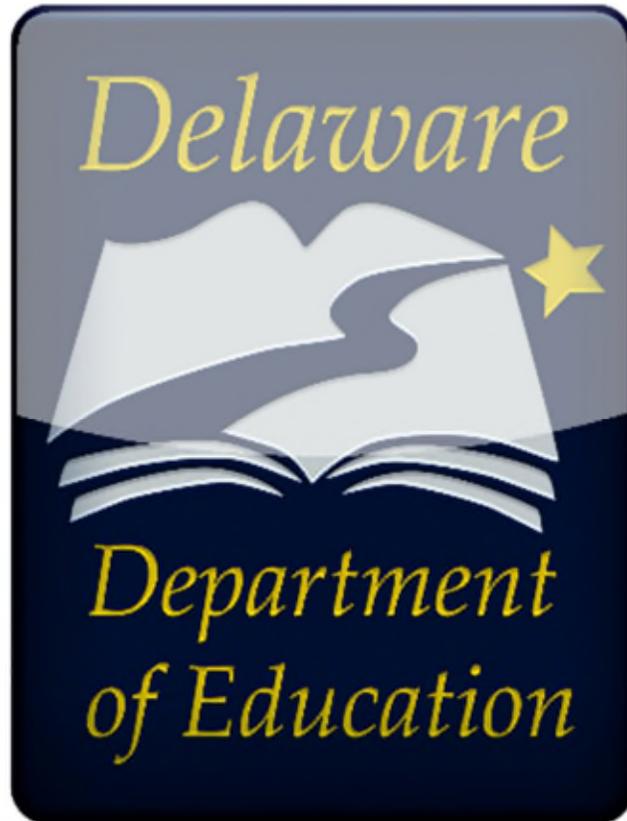


Special Education State Complaint Procedures



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Exceptional Children Resources
July 2019

OVERVIEW

The Individuals with Disabilities Education Act (IDEA) requires states to provide ways for parents, school districts, charter schools, and other private and public agencies to resolve disputes related to the provision of a free, appropriate public education (FAPE) to children with disabilities. A special education “state complaint” is one of the dispute resolution methods required by the IDEA. A state complaint may be filed by any private or public organization, public agency, or individual, including one from another state, related to any alleged violation of Part B of the IDEA, or the Delaware Department of Education (Department) regulations concerning the education of children with disabilities.

The Department has developed this guide to inform parents, local education agencies, and concerned citizens about the state complaint process and the procedures for filing a state complaint with the Department. The Department is responsible for investigating and resolving complaints that are filed with the Department in accordance with these procedures. The Department is also responsible for monitoring the completion of any corrective action issued as a result of a complaint investigation, including steps to ensure compliance with corrective action, such as providing technical assistance and taking additional enforcement actions, as appropriate.

FILING A STATE COMPLAINT

A state complaint is initiated by the filing of a written complaint with the Department.

Any private or public organization, public agency, or individual, including one from another state, may file a signed written state complaint that meets content requirements.

A state complaint must be in writing, signed by the complainant, and include the following:

- (1) A statement the school district, charter school, or other public agency violated a requirement of Part B of the IDEA, or the Department regulations concerning the education of children with disabilities;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant, and legal representative, if any, or of individuals representing a public agency or private organization filing a complaint;
- (4) If alleging violations with respect to a specific child,
 - (a) the child’s name and address of residence;
 - (b) the name of the school the child is attending;
 - (c) in the case of a homeless child or youth (within the meaning of the McKinney-Vento Homeless Assistance Act), available contact information for the child

- and the name of the school the child is attending;
- (d) a description of the nature of the problem of the child, including facts relating to the problem; and
- (e) a proposed resolution of the problem to the extent known and available to the party filing the complaint at the time it is filed.

A state complaint may also include additional information that is optional, such as the time frame in which the alleged violation occurred and a description of the attempts made to resolve the issue(s) prior to the filing of the complaint, if any.

The complaint must allege a violation that occurred not more than one (1) year prior to the date the Department receives the complaint.

A state complaint may allege a school district, charter school, or other public agency failed to provide a free appropriate public education to a specific child, or to a group of children. A state complaint may also allege systemic noncompliance based on a policy, practice, or procedure applicable to a group of children that is inconsistent with Part B of the IDEA, federal regulations, and/or corresponding Delaware law.

The Department provides a Special Education State Complaint Form and instructions for individuals, organizations, and public agencies to use when filing a complaint. The complainant may use the form, or another form or document, as long as the form or document meets the content requirements. The Special Education State Complaint Form can be found online at: <https://www.doe.k12.de.us/rightsandresolution>, and is also included as an attachment to this document.

The complaint must be signed by the person, organization, or public agency representative filing it, and hand delivered, deposited in the U.S. mail, or faxed to:

Mary Ann Mieczkowski
Director, Exceptional Children Resources
Delaware Department of Education
John G. Townsend Building
401 Federal Street, Suite 2
Dover, DE 19901
Fax (302) 739-2388

State complaints will not be considered received until confirmed by the receipt of the signed complaint by the Exceptional Children Resources Work Group. Electronic signatures are acceptable. The Department does not accept state complaints by E-mail.

The complainant must also send a copy of the complaint to the school district, charter school, or other public agency serving the child at the same time the complaint is sent to the Department. The complainant's failure to send a copy of the complaint to the opposing party will not delay the start of the Department's sixty (60) calendar day timeline for

investigation. The Department will send a copy of the complaint to the opposing party with the Notice of State Complaint upon assignment of the investigator.

DEPARTMENT RESPONSE

Upon receipt of a state complaint, the Department will stamp it as “received” and mark the business day of receipt.

Within five (5) business days of receipt of the complaint, the Department shall assign an investigator, and send written notification confirming receipt of the complaint to the complainant, and the school district, charter school, or other public agency involved in the complaint.

The Notice of State Complaint shall include:

- (1) The name of the assigned complaint investigator;
- (2) Confirmation of the date the complaint was received by the Department and the due date for the written decision in accordance with the sixty (60) calendar day timeline;
- (3) The procedures for granting an extension of the sixty (60) calendar day timeline;
- (4) Notice to both parties of the right to submit additional information, to the Department, either orally or in writing, related to the allegations in the complaint;
- (5) Notice to the school district, charter school, or public agency of the right to submit a response to the complaint within fifteen (15) calendar days of receipt, and/or a proposal to resolve the complaint, including the use of mediation;
- (6) Information for the complainant and the school district, charter school, or public agency to voluntarily engage in mediation at no cost through the Department’s mediation program with the University of Delaware’s Special Education Partnership for the Amicable Resolution of Conflict (SPARC) at the Conflict Resolution Program (CRP);
- (7) The Department’s Special Education State Complaint Procedures;
- (8) The Delaware Procedural Safeguards Parent and Child Rights in Special Education; and
- (9) A copy of the state complaint for the school district, charter school, or public agency involved in the complaint.

The Department shall send the Notice of State Complaint and its enclosures to the school district superintendent or charter school director, and special education director or special education lead administrator.

If the Department determines the complaint does not contain all the required content, the Department shall notify the complainant, in writing, within five (5) business days of the receipt of the complaint. The Department shall dismiss the complaint and provide the complainant with directions for resubmission of the complaint, and Delaware Procedural Safeguards Parent and Child Rights in Special Education. Re-submitted complaints are treated as new complaints. Therefore, the sixty (60) calendar day timeline will commence upon the Department's receipt of the re-submitted complaint.

Examples of reasons the Department may decline to investigate a complaint:

- (1) The complaint is not signed, or does not include the required contact information;
- (2) The complaint does not state a violation occurring within the last year; or
- (3) The complaint does not allege a violation under the IDEA, or federal or state special education regulations. For example, complaints alleging violations of Section 504 cannot be addressed through the IDEA complaint process.

If a state complaint and due process complaint are filed over the same issue, the hearing shall take precedence over the state complaint procedure. If a state complaint issue is also the subject of a due process hearing, or if the state complaint contains multiple issues of which one (1) or more are part of the hearing, the Department shall:

- (1) Communicate if necessary with the panel chairperson to verify the issues subject to the due process hearing;
- (2) Set aside any part of the state complaint that is being addressed in the due process hearing until the conclusion of the hearing;
- (3) Provide written notice to the parties identifying the part of the state complaint that is being set aside until the conclusion of the hearing; and
- (4) Resolve any issues in the state complaint that are not part of the due process hearing involving the same parties.

Issues that are separate and distinct from a pending due process hearing shall be investigated by the Department and resolved within the sixty (60) calendar day timeline.

A complaint alleging the failure to implement a due process hearing decision may also be resolved by the Department.

If an issue raised in a state complaint was previously decided in a due process hearing involving the same parties, the due process hearing is binding on that issue, and the Department will inform the complainant of the binding effect.

TIMELINE FOR INVESTIGATION AND WRITTEN DECISION

The Department must complete its investigation and issue a written decision within sixty (60) calendar days following the Department's receipt of a complaint.

The written decision is due on or before the sixtieth (60th) calendar day, and does not carry over to the next business day when the due date falls on a Saturday, Sunday, or legal holiday.

The Department may permit an extension of the sixty (60) calendar day timeline only if exceptional circumstances exist to justify a longer period and/or both parties agree to extend the timeline to participate in mediation or other alternative means of dispute resolution.

The Department shall not treat the parties' participation in mediation, in and of itself, as an exceptional circumstance to warrant an extension of the sixty (60) calendar day timeline. Rather, an extension may be granted when both parties agree to extend the sixty (60) calendar day timeline to participate in mediation. If the parties agree to participate in mediation, but do not agree to the extension of the complaint resolution timeline, and the mediation is not successful in resolving the dispute, the Department must ensure the complaint is resolved within sixty (60) calendar days after the complaint is received.

Extensions are granted by the Director of the Exceptional Children Resources Work Group. The Department considers, on a case by case basis, whether it is appropriate to extend the sixty (60) calendar day timeline for a particular complaint due to exceptional circumstances.

The Department shall notify both parties if an extension is granted, and include the basis for the extension and the extended due date for decision.

RESPONSE TO COMPLAINT AND EARLY RESOLUTION

The Department shall provide the school district, charter school, or other public agency involved in the complaint an opportunity to submit a written response to the complaint, and to propose a resolution to the complaint. The written response to the complaint should be sent to the Department, with a copy to the complainant, within fifteen (15) calendar days of the Department's receipt of the complaint.

Early resolution may include use of state sponsored mediation to address and resolve the complaint. The Department offers mediation services to the parties at no cost through the University of Delaware's Special Education Partnership for the Amicable Resolution of

Conflict (SPARC), at the Conflict Resolution Program. Mediations held through SPARC are conducted by qualified and independent mediators knowledgeable in special education who can help the parties attempt to reach a mutually acceptable resolution.

After the complaint is filed with the Department, a SPARC representative will contact the parties to explore their interest in pursuing mediation, and explain the process.

Mediation must be voluntary on the part of the parties. Each session in the mediation process must be scheduled in a timely manner and be held in a location that is convenient to the parties to the complaint.

Mediation must not be used to deny or delay the parent's rights afforded under Part B of the IDEA, and the Department regulations. Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Parents must be permitted to be accompanied and advised at mediation by individuals of their choice. Any school district or charter school involved in mediation shall assure an individual from the public agency with the authority to make decisions and commit resources to agreed services attends the mediation.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth the resolution and states all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The agreement must be signed by both the parent and a representative of the school district or charter school who has authority to bind the public agency.

If mediation results in a written agreement resolving all the complaint issues, SPARC will notify the Department, and the complaint will be dismissed. If mediation results in a partial resolution of the complaint issues, the Department shall investigate the remaining issues, based on the agreement reached at mediation.

If a state complaint is filed by a non-parent or organization involving a specific child, the Department shall offer mediation services to the parent, and school district, charter school, or public agency involved in the complaint. The Department does not offer mediation services to non-parents or organizations for complaints involving the educational rights of specific children. However, a non-parent may accompany a parent to mediation if requested by the parent and written consent to disclose the child's personally identifiable information is provided by the parent.

CONFIDENTIALITY OF STUDENT INFORMATION

The Family Educational Rights to Privacy Act (FERPA), 20 U.S.C. 1232g, 34 C.F.R., pt. 99, and corresponding state statutes and regulations apply to all aspects of the Department's investigation with regard to a student's personally identifiable information.

FERPA protects the privacy of student education records. In general, schools and public agencies must have written consent to release any information from a student's education records. There are, however, several enumerated exceptions to the written consent requirement under FERPA.

When consent is required under FERPA, the consent must be signed and dated, specify the records that may be disclosed, state the purpose of the disclosure, and identify the persons to whom disclosure may be made.

The Department shall request the parent who files a state complaint to sign a written consent allowing disclosure of protected student information among the parties involved in the complaint and investigation.

The complaint investigator is responsible for contacting the parent, explaining the Parental Consent for Release of Personally Identifiable Information form to the parent, and forwarding the signed form to the Department.

COMPLAINT FILED BY NON-PARENT

If a state complaint is filed by an organization or individual other than the parent, parental consent must be obtained before the Department can provide personally identifiable information about the child to the complainant as part of the complaint and investigation.

The Department shall send notice to the complainant stating that without parental consent to release personally identifiable information about the child, the Department is not able to respond directly to the complainant regarding the complaint or the investigation. If parental consent is not provided, the Department shall proceed with an investigation, and issue a written decision directly to the parent and school district, charter school, or other public agency involved in the complaint.

The Department shall also send the Notice of State Complaint to the parent, and include an explanation of the FERPA provisions, and the parent's options to either provide or withhold consent to release personally identifiable information about the child to the complainant.

The complaint investigator is responsible for contacting the parent, explaining the Parental Consent for Release of Personally Identifiable Information form to the parent, and forwarding the signed Form to the Department, if signed by the parent.

If parental consent is not provided, the Department shall determine, on a case by case basis, whether the results of the Department's complaint resolution can be shared with the complainant. The complaint decision will likely involve the child's personally identifiable information, and it may not be possible for the Department to issue its decision to the complainant.

COMPLAINT INVESTIGATION

A complaint investigator may be an employee of the Department, or a contractor of the Department.

The Department shall carry out an independent on-site investigation, if the Department determines it necessary. An independent on-site investigation is not required for every complaint, and determined by the Department on a case by case basis.

Upon assignment, the investigator shall contact the complainant, and school district, charter school, or other public agency to discuss the complaint allegations, and proceed with the investigation. The investigator shall give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

WRITTEN DECISION

Upon completion of the investigation, the complaint investigator shall prepare a draft written decision and forward it to the Director of the Exceptional Children Resources Work Group for finalization.

The final written decision shall be issued by the Director of the Exceptional Children Resources Work Group with a notice addressed to the parent, and school district, charter school, or public agency involved in the complaint.

The Department shall review all relevant information and make an independent determination whether the school district, charter school, or other public agency is violating a requirement of Part B of the IDEA or the Department regulations concerning the education of children with disabilities. The Department's written decision shall:

- (1) Summarize the complaint issues and alleged violations;
- (2) Identify the parties and the investigation process, including the persons interviewed;
- (3) Make concise findings of fact relevant to each complaint issue and alleged violation based on the information received during the investigation;
- (4) Cite to relevant federal and state statutes and regulations for each complaint issue and alleged violation;
- (5) Draw conclusions, based on applicable federal and state law, whether the school district, charter school, or other public agency is in compliance with special education requirements, and include reasons for the Department's decision;

- (6) Specify the corrective action ordered by the Department if the school district, charter school, or other public agency is found out of compliance and specify explicit timelines to ensure each corrective action is completed as soon as possible; and
- (7) Close the complaint if compliance is determined by explaining in the written decision that no violations were identified.

The written decision shall exclude non-relevant material, and facts unrelated to the complaint issues and alleged violations.

The written decision shall include necessary personally identifiable information concerning the child, and the individuals involved in the investigation.

To the extent possible, the decision shall be written to refer to the parties in general terms (for example, "student," "district," or "teacher").

The Department posts its complaint procedures and written complaint decisions listed by school year on the Department's website for access by the general public. Personally identifiable information is redacted from the decisions prior to public posting to ensure compliance with FERPA and corresponding state statutes and regulations protecting confidential student information.

CORRECTIVE ACTION

If the Department identifies non-compliance, the written decision shall specify steps which the school district, charter school, or other public agency must take to bring it into compliance.

The Department shall order specific corrective action to remediate the denial of services or procedural violations which may include, but is not limited to, compensatory education, staff training and professional development by the school district, charter school, or other public agency, and appropriate future provision of services for children with disabilities.

The written decision shall include explicit timelines by which the school district, charter school, or other public agency is required to respond to the decision and implement corrective action.

The Department may direct the school district, charter school, or other public agency to develop a corrective action plan. The plan shall specify timelines and sufficient detail to describe how the violations will be corrected, and it must be approved by the Department.

The Department is responsible for tracking and ensuring the implementation of corrective action ordered through the complaint process. The Department shall verify the corrective

actions are implemented as soon as possible within the timelines specified in the written decision, and no later than one (1) year from the Department's identification of non-compliance.

The Department shall periodically follow-up with the school district, charter school, or public agency by written correspondence, or on-site visits and record reviews as necessary, to confirm completion of corrective actions.

When the school district, charter school, or public agency submits satisfactory evidence that all actions in the corrective action plan have been completed and correction of noncompliance is verified, the Department shall notify the school district superintendent, charter school director, or director of special education and the complainant. The Department may also continue to monitor the school district, charter school, or other public agency and request additional action to ensure future compliance with federal and state regulations.

The Department ensures the written decision is implemented through technical assistance activities, negotiations, and corrective actions to achieve compliance.

NO APPEAL OR RECONSIDERATION

The Department does not accept or receive appeals or requests for reconsideration of state complaint decisions. If an issue is still in dispute, the parent, school district, charter school, or public agency may use mediation or file a due process complaint to request a due process hearing.

STATE COMPLAINT FILED AGAINST THE DEPARTMENT

Complaints filed against the Department shall be assigned to an investigator contracted by the Department, rather than a Department employee, when possible.

If a complaint is filed against the Department and includes allegations against the Director of the Exceptional Children Resources Work Group, the complaint decision shall be reviewed and approved by the Associate Secretary, Deputy Secretary, or Secretary of Education prior to its issuance. The Deputy Attorney General for Special Education should be notified promptly and provided a copy of the state complaint.

PUBLIC AWARENESS

The Department disseminates its complaint procedures to school district, charter school, and public agency personnel, parents, the Governor's Advisory Council for Exceptional Citizens, and other advocacy groups, as requested. The Department also collaborates with the Parent Information Center of Delaware, Inc., and SPARC to ensure awareness of these procedures. The Department posts the complaint procedures on the Department's website, in addition to redacted complaint decisions issued by the Department and listed by school year.