

STATE COMPLAINT PROCEDURES

(See also **Procedural Safeguards: Resolution Meetings and Due Process Hearings, Procedural Safeguards: Surrogate Parents, Notice and Parental Consent and Procedural Safeguards: Mediation**)

The reauthorized *Individuals with Disabilities Education Act (IDEA)* was signed into law on Dec. 3, 2004, by President George W. Bush. The provisions of the act became effective on July 1, 2005, with the exception of some of the elements pertaining to the definition of a “highly qualified teacher” that took effect upon the signing of the act. The final regulations were published on Aug. 14, 2006. This is one in a series of documents, prepared by the Office of Special Education and Rehabilitative Services (OSERS) in the U.S. Department of Education that covers a variety of high-interest topics and brings together the regulatory requirements related to those topics to support constituents in preparing to implement the new regulations.¹ This document addresses significant changes from preexisting regulations to the final regulatory requirements regarding state complaint procedures.

IDEA Regulations

1. Require states to adopt written complaint procedures.

Each State educational agency (SEA) must adopt written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of 34 CFR 300.153 by:

- Providing for the filing of a complaint with the SEA; and
- At the SEA’s discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency’s decision on the complaint; and
- Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under 34 CFR 300.151 through 300.153.

[34 CFR 300.151(a)] [20 U.S.C. 1221e-3]

2. Require states to include remedies for the denial of appropriate services in resolving a complaint in which the SEA has found a failure to provide such services.

In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- Appropriate future provision of services for all children with disabilities.

[34 CFR 300.151(b)] [20 U.S.C. 1221e-3]

¹ Topics in this series include: Alignment With the *No Child Left Behind (NCLB) Act*; Changes in Initial Evaluation and Reevaluation; Children Enrolled by Their Parents in Private Schools; Discipline; Disproportionality and Overidentification; Early Intervening Services; Highly Qualified Teachers; Identification of Specific Learning Disabilities; Individualized Education Program (IEP) Team Meetings and Changes to the IEP; Individualized Education Program (IEP); Local Funding; Monitoring, Technical Assistance and Enforcement; *National Instructional Materials Accessibility Standard (NIMAS)*; Part C Amendments in *IDEA 2004*; Part C Option: Age 3 to Kindergarten Age; Procedural Safeguards: Surrogates, Notice and Consent; Procedural Safeguards: Mediation; Procedural Safeguards: Resolution Meetings and Due Process Hearings; Secondary Transition; State Complaint Procedures; State Funding; and Statewide and Districtwide Assessments. Documents are available on the *IDEA* Web site at: <http://IDEA.ed.gov>.

3. Specify minimum requirements for a state's complaint procedures.

Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under 34 CFR 300.153 to:

- Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:
 - o At the discretion of the public agency, a proposal to resolve the complaint; and
 - o An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with 34 CFR 300.506;
- Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of Part 300; and
- Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the SEA's final decision.

[34 CFR 300.152(a)] [20 U.S.C. 1221e-3]

The SEA's procedures described in 34 CFR 300.151(a) must permit an extension of the 60-day time limit only if:

- Exceptional circumstances exist with respect to a particular complaint; or
- The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution, if available in the State.

[34 CFR 300.152(b)(1)] [20 U.S.C. 1221e-3]

The SEA's procedures described in 34 CFR 300.152(a) must include procedures for effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

[34 CFR 300.152(b)(2)] [20 U.S.C. 1221e-3]

4. Contain procedures for complaints related to due process hearings.

If a written complaint is received that is also the subject of a due process hearing under 34 CFR 300.507 or 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the 60-day time limit and procedures in 34 CFR 300.152(a), unless that time limit is properly extended under 34 CFR 300.152(b).

[34 CFR 300.152(c)(1)] [20 U.S.C. 1221e-3]

If an issue raised in a complaint filed under 34 CFR 300.152 has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the SEA must inform the complainant to that effect.

[34 CFR 300.152(c)(2)] [20 U.S.C. 1221e-3]

A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

[34 CFR 300.152(c)(3)] [20 U.S.C. 1221e-3]

5. Include new procedures for filing a state complaint.

An organization or individual may file a signed written complaint under the procedures described in 34 CFR 300.151-300.152. The complaint must include:

- A statement that a public agency has violated a requirement of Part B of the Act or of Part 300;
- The facts on which the statement is based;
- The signature and contact information for the complainant; and
- If alleging violations with respect to a specific child:
 - o The name and address of the residence of the child;
 - o The name of the school the child is attending;
 - o In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
- A description of the nature of the problem of the child, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The party filing the complaint must forward a copy of the complaint to the local educational agency (LEA) or public agency serving the child at the same time the party files the complaint with the SEA.

[34 CFR 300.153(b) and 300.153(d)] [20 U.S.C. 1221e-3]

6. Specify the time limit for filing a complaint.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 CFR 300.151.

[34 CFR 300.153(c)] [20 U.S.C. 1221e-3]

7. Require model forms.

Each SEA must develop model forms to assist parents and...other parties in filing a State complaint under 34 CFR 300.151 through 300.153. However, the SEA or LEA may not require the use of these model forms.

Parents, public agencies, and other parties may use the appropriate model form described in 34 CFR 300.509(a) or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements...in 34 CFR 300.153(b) for filing a State complaint.

[34 CFR 300.509] [20 U.S.C. 1415(b)(8)]