



COLORADO DEPARTMENT OF EDUCATION

EXCEPTIONAL STUDENT LEADERSHIP UNIT
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Colorado Department of Education
Management Policies and Procedures

Amended: May 4, 2010

STATE-LEVEL COMPLAINT PROCEDURES

PROCEDURES FOR RESOLVING STATE COMPLAINTS ABOUT PROGRAMS FUNDED UNDER PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) ADMINISTERED BY THE COLORADO DEPARTMENT OF EDUCATION (CDE)

In General

The general complaint procedures and requirements established in the IDEA Part B regulations at 34 CFR §§ 300.151 through 300.153 for State complaints (Complaint) shall apply.

Specific Complaint Procedures

1. A Complaint is a signed, written document alleging that there has been a violation of Part B of the IDEA.
2. A Complaint may be filed by an organization or individual alleging that an IDEA Part B program participant has violated a requirement of Part B of the IDEA or its implementing regulations at 34 CFR Part 300.
3. Required Content of the Complaint: The Complaint **must** contain the following information:
 - a. A statement that the IDEA Part B program participant has violated a requirement of Part B of the IDEA and an identification of the portion of the statute, law, rule or regulation alleged to have been violated, if known by the complainant;
 - b. The background information (including copies of all IEPs and other documents relevant to the Complaint) and facts on which the statement is based that identify persons, actions, and/or omissions which serve as the basis for the Complaint;
 - c. If alleging violations with respect to a specific child, the name and the residential address of the child;
 - d. The name of the school that the child is attending;

- e. A proposed resolution of the problem to the extent known and available to the complainant at the time the Complaint is filed;
 - f. The Complaint must allege that the violation(s) set forth in the Complaint occurred **not more than one (1) year prior to the date that the Complaint is filed with the CDE**;
 - g. The signature and contact information (minimally, address and telephone number) for the complainant; and
 - h. Written verification in a cover letter accompanying the Complaint that a complete copy of the Complaint and any attachments have also been mailed or hand-delivered to the special education director of the IDEA Part B public agency (i.e., in Colorado, a special education Administrative Unit¹ or State-Operated Program²) serving the child.
4. The Complaint, including any attachments, must be mailed or hand-delivered to:

IDEA Part B State Complaints Officer
 Colorado Department of Education
 Exceptional Student Leadership Unit, Dispute Resolution Office
 1560 Broadway, Suite 1175
 Denver, Colorado 80202

Additionally, as noted in paragraph 3(h) above, a complete copy of the Complaint, including any attachments, must also be mailed or hand-delivered to: the special education director of the IDEA Part B public agency serving the child.

NOTE: THE STATE COMPLAINTS OFFICER (SCO) WILL NOT ACCEPT ANY COMPLAINT, RESPONSE OR REPLY VIA FACSIMILE OR E-MAIL.

- 5. The Complaint shall be considered properly filed with the CDE when it is received in the office of the SCO and satisfies paragraphs (3)(a) through (h), above. A Complaint, once filed, will not be accepted for investigation if the CDE does not have jurisdiction (i.e., power) to investigate; or if the Complaint does not set forth sufficient grounds on which to grant relief.
- 6. Within ten calendar (10) days, the SCO shall decide to accept or reject the Complaint for investigation and notify the complainant in writing. If the Complaint is accepted, the SCO shall:
 - a) Notify the complainant of receipt and acceptance of the Complaint;
 - b) Notify, by certified or overnight mail, the public agency of each and every allegation contained in the Complaint together with a complete copy of the Complaint; and
 - c) Initiate an investigation concerning the allegations contained in the Complaint.

¹ "Administrative Unit" means: a school district meeting standards of size as approved by the State Board of Education, boards of cooperative educational services (BOCES), or the Charter School Institute.

² "State-Operated Program" means: Colorado Department of Corrections; Division of Youth Corrections of the Colorado Department of Human Services; Colorado School for the Deaf and Blind; or the Colorado Mental Health Institute at Pueblo.

Investigation and Timelines

7. **Complaint Timelines:**

a) **Response:** Within fifteen (15) calendar days of receiving the SCO's notification of the Complaint, the public agency may file a Response to the Complaint allegations and provide information which it deems necessary or useful for the SCO to consider in conducting a thorough investigation. If the public agency fails to timely respond to an allegation, the SCO may, in his/her sole discretion, deem the allegation admitted. NOTE: the Response is due by 5:00 p.m. on the date due. The public agency shall provide any written Response to the SCO and also a complete copy of the Response, including any attachments, to the complainant unless doing so would violate relevant laws regarding confidentiality. The public agency shall provide the SCO with a legible copy of the written tracking receipt which verifies that a complete copy of the Response, including any attachments, was sent by certified or overnight mail to the complainant.

b) **Reply:** Within ten (10) calendar days of delivery of the response, the complainant may file a written Reply to the Response, including any attachments, in support of his/her position. The complainant shall provide any written Reply to the SCO at the address identified in paragraph 4, above, and also provide the SCO by 5:00 p.m. on the date due with written verification that a complete copy of the Reply, including any attachments, was also mailed or hand-delivered to the public agency.

NOTE: The Response and Reply must be delivered by 5:00 p.m. on the date due (or the next calendar day following a weekend or state holiday if the due date is on a weekend or state holiday) to the office of the SCO and not merely postmarked by the due date. If the Response or Reply is untimely, the SCO may, within his or her sole discretion, refuse to consider the late document.

c) **Timeline Extensions:** If the SCO finds that exceptional circumstances exist with respect to a particular Complaint, the SCO may, in his or her sole discretion, extend for a reasonable period of time, any of the timelines set forth in these Complaint procedures. Any request and extension of a timeline must occur prior to expiration of the timeline and shall be documented in a written order issued by the SCO prior to the expiration of the timeline and mailed to the parties. Note: The SCO does not have authority to extend the regulatory statute of limitations of one (1) year described in Section 3 (f), above.

8. The Complaint investigation may include, but is not limited to: an onsite investigation; request(s) that the complainant or public agency provide additional information; and request(s) to review records in the possession of either party.
9. Any time after a Complaint is filed and before the Complaint is resolved, the SCO may order a public agency to undertake immediate action in an extraordinary situation when it is imperative to do so in order to protect the rights, health or safety of any student under IDEA as administered by the CDE.
10. Any time after a Complaint is filed and before the Complaint is resolved, the SCO may, at the request of the complainant and public agency, refer the parties to voluntary mediation and secure a mediator to facilitate the session. The mediation session shall take place within a time frame established by the SCO.

11. The CDE, through the SCO, shall have sixty (60) calendar days from the date of receipt of the properly filed Complaint, to resolve the Complaint. The parties may mutually agree to extend the sixty (60) calendar day time limit in order to engage in voluntary mediation. Any extension of the Decision due date will be set by the SCO to a date certain as per section 7(c), above.

Resolution

12. The SCO shall issue a written Decision which details the findings of fact and conclusions of law unless the issues have been previously resolved. Based upon a finding that an IDEA Part B public agency has failed substantially to comply with the IDEA, the SCO will, as part of the resolution of the Complaint, notify the public agency of remedial actions that must be taken in order to come into compliance with applicable law and regulations, (e.g., technical assistance activities; negotiations and corrective actions). Additionally, the SCO has authority to award appropriate remedies for the denial of appropriate services including compensatory educational services or monetary reimbursement. The SCO is not authorized to award attorneys' fees.
13. The Decision of the SCO shall constitute the final action of the CDE and is not subject to appeal. Both parties shall be notified of such action by certified or overnight mail, return receipt requested. If either party disagrees with the Decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees. See, 34 CFR §300.507(a); Analysis of Comments and Changes to the 2006 Part B Regulations, 71 Fed. Reg. 46607 (August 14, 2006).