



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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Contact Persons
Names: Camellia Wang
JoLeta Reynolds
Telephone: (202) 205-5507

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MEMORANDUM

TO: Chief State School Officers

FROM: Kenneth R. Warlick *Kenneth R. Warlick*
Director
Office of Special Education Programs

SUBJECT: Complaint Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B)

INTRODUCTION

The purpose of this Memorandum is to provide guidance on the State complaint procedures that are set out at 34 CFR §§300.660-300.662 of the final Part B regulations, published in the Federal Register on March 12, 1999. The Department wishes to highlight these procedures to provide for more clarity and consistency in the effective implementation of Part B of the Individuals with Disabilities Education Act (Part B). For State complaint procedures applicable to Part C of the Act, refer to OSEP Memorandum 00-21 being issued at the same time as this memorandum.

Part B's State complaint procedures are critical to each State's exercise of its general supervision responsibilities because they provide parents with an important means of ensuring that the educational needs of their children are met and provide the State educational agency (SEA) with a powerful tool to identify and correct noncompliance with the IDEA and its implementing regulations.¹ As part of its general supervisory responsibility, an SEA must implement

¹ Under §300.600(a), each SEA is responsible for ensuring that: (1) the requirements of Part B are carried out; and (2) each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency—

- (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

complaint resolution procedures in a manner that meets the requirements of §§300.660-300.662 (see Section I). Because of the important role that effective State complaint resolution plays for parents, public agencies, and the SEA in meeting its general supervisory responsibility, each State's complaint procedures are addressed in OSEP's continuous improvement monitoring process. The State complaint procedures, which are under the direct control of the SEA, have the potential for providing a less costly and more efficient mechanism for resolving disputes than the impartial due process hearing system. Therefore, effective implementation of the complaint resolution procedures likely will have a positive impact on both parents and public agencies.

This Memorandum is divided into three sections. Section I outlines the State complaint procedures, focusing on the language of §§300.660-300.662. Section II provides information regarding the relationship between the complaint resolution and due process hearing procedures in the Part B regulations. Finally, Section III presents in question-and-answer format certain areas of the State complaint procedures that are of key concern to the public.

I. STATE COMPLAINT PROCEDURES

The following is a description of the requirements for State complaint procedures, as set out in §§300.660-300.662.

A. Adoption of State Complaint Procedures; Filing a Complaint. (§§300.660 and 300.662)

Generally, §300.660 requires each SEA to adopt written procedures for resolving any complaint, including any complaint filed by any organization or individual from another State, that meets the requirements of §300.662 (see next paragraph). Under §300.660(a), these procedures must --

1. Provide for the filing of a complaint with the SEA;
2. At the SEA's discretion, provide 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
3. Provide for wide dissemination 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's procedures under §§300.660-300.662. Another section of the regulation, §300.504(b)(14), requires that the procedural safeguards notice that goes to individual parents includes a full explanation of the State complaint procedures including how to file a complaint and the timelines under those procedures.

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- (ii) Meets the education standards of the SEA (including the requirements of Part B).

As specified at §300.662(b)(1) and (2), an organization or individual may file a signed written complaint that includes: (1) a statement that a public agency has violated a requirement of Part B or its implementing regulations; and (2) the facts on which the statement is based. Section 300.662(c) provides that a complaint must include an allegation that a violation occurred not more than one year prior to date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a). Allegations of violations outside of these time frames do not have to be accepted by the SEA as complaints under §§300.660-300.662.

B. Minimum State Complaint Procedures. (§300.661)

Each SEA, under §300.661(a), is required to include in its complaint procedures a time limit of 60 calendar days after a complaint is filed under §300.660(a) to –

1. Carry out an independent on-site investigation, if the SEA determines that such an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegation(s) in the complaint;
3. Review all relevant information and make an independent decision as to whether the public agency is violating a requirement of Part B; and
4. Issue a written decision that addresses each allegation in the complaint and contains –
 - a. Findings of fact and conclusions, and
 - b. The reasons for the SEA's final decision.

In addition, the State's complaint procedures must include the following:

- - Permitting an extension of the time limit under §300.661(a) only if exceptional circumstances exist with respect to a particular complaint (§300.661(b)(1)), and
- Procedures for the effective implementation of the SEA's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance (§300.661(b)(2)).

II. RELATIONSHIP BETWEEN THE STATE COMPLAINT RESOLUTION AND DUE PROCESS HEARING SYSTEMS

Under the Part B regulations, parents of children with disabilities have two separate means available to them for resolving disputes with public agencies concerning the

education of their children -- i.e., (1) the State complaint resolution system required in §§300.660-300.662 (the subject of this memorandum), and (2) the impartial due process hearing system required in §§300.506-300.513. States also are required to have mediation available at a minimum when a due process hearing is requested.

The State complaint procedures are available for resolving any complaint that meets the requirements of §300.662, including: (1) complaints that raise systemic issues, and (2) individual child complaints. Parents may use (but are not required to use) the complaint procedures -- in addition to the due process hearing system -- to resolve disagreements with public agencies over any matter concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child, as well as any other allegation that a public agency has violated Part B.

It is impermissible under Part B for an SEA to: (1) have a procedure that removes complaints about FAPE or any other matter concerning the identification, evaluation, or educational placement of the particular child or any other allegation of a violation of Part B or its implementing regulations from the jurisdiction of its State complaint resolution system, or (2) advise or require parents to request a due process hearing before the SEA can initiate a complaint investigation. Neither can an SEA deny a request for a due process hearing because a State complaint was not first filed. Thus, whenever an SEA receives a signed written complaint that alleges the public agency is violating a requirement under Part B, including any matter for which parents could request a due process hearing, the SEA, subject to §300.661(b), must resolve the complaint within 60 calendar days, using the procedures in §300.661 and outlined in Section I above.

In addition, the SEA is to establish and implement procedures to allow parties to resolve disputes through a mediation process that, at a minimum, must be available whenever a due process hearing is requested. (§300.506(a)). These procedures must ensure that the mediation process is: (1) voluntary on the part of parties; (2) not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of the Act, including the right to file a complaint and to resolve the complaint within 60 days; and (3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (§300.506(b)(1)). The State bears the cost of mediation, including meetings, and each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. (§300.506(b)(3)-(4)). Any agreement reached by the parties to the dispute in the mediation process is to be set forth in a written mediation agreement. (§300.506(b)(5)).

If a signed written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the State must set aside the part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. §300.661(c)(1). However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in §300.661(a)-(b). If an issue is raised that has previously been decided in a due process hearing involving the same parties, the hearing decision is

binding and the SEA must inform the complainant to that effect. §300.661(c)(2). Further, a complaint alleging a public agency's failure to implement a due process decision must be resolved by the SEA. §300.661(c)(3).

III. QUESTION & ANSWERS ON PARTICULAR AREAS OF THE STATE COMPLAINT PROCEDURES

Question 1: Who can file a State complaint?

Answer: Not only a child's parent, but *any organization or individual*, may file a signed written complaint that includes: (1) a statement that a public agency has violated a requirement of Part B or its implementing regulations; (2) the fact(s) on which the statement is based; and (3) an allegation of a violation that did not occur more than one year prior to the date that the complaint is received. (see §300.662). This requirement is different for a due process hearing in *which only a parent (or a student exercising rights that have transferred at the age of majority (see §300.517)) or the public agency may initiate a hearing.* (§300.507(a)).

Question 2: When an organization or individual, other than a parent or public agency, files a State complaint regarding FAPE for a specific child, how should an SEA proceed?

Answer: An SEA is required to resolve any complaint that meets the requirements of §300.662, including a complaint alleging that a public agency has failed to provide FAPE to a child with a disability. Thus, the SEA would be required to follow the State complaint procedures outlined in §300.661 as it would any other case where a violation of Part B is alleged.

If a complaint is filed by someone other than the parent, the SEA may not provide personally identifiable information to the non-parent complainant as part of the decision without parent consent. Under §300.571(a)(1), parental consent generally must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under Part B.

Question 3: Can an issue(s) that is the subject of a State complaint also be the subject of a due process hearing?

Answer: Yes, as long as the issue(s) is an alleged violation of Part B of the IDEA or its applicable regulations and it relates to the child's identification, evaluation, or educational placement or the provision of FAPE to the child, it could also be the subject of a due process hearing. If this occurs, however, 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. Any issue in the complaint that is not part of the due process action must be resolved using the time limit and procedures consistent with the State complaint requirements.

Question 4: If a complainant has already filed a State complaint which has not been resolved, can he or she still request a due process hearing?

Answer: Yes. Filing State complaints does not prevent complainants from requesting a due process hearing. In some cases, the complaint may also be the subject of a due process hearing, or may contain multiple issues of which one or more may be part of the hearing. In those cases, 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 a due process action must be resolved within the 60-calendar day timeline using the SEA's complaint resolution procedures, as described in §300.661(a) and (b). (§300.661(c)).

Question 5: If a hearing officer rules on an issue(s) raised by the parent in a due process hearing, is there any time in which a subsequent complaint on the same issue may be filed?

Answer: Section 300.661(c)(2) provides that if a hearing officer has already ruled on an issue at a due process hearing, the decision is final and binding. The SEA must inform the complainant that the hearing decision is binding. The SEA must use its State complaint resolution procedures to resolve any issue(s) in the complaint that was not resolved in the hearing. In determining that it will not resolve an issue in a complaint because that issue was previously resolved in a due process hearing, the SEA must ensure that the legal and factual issues are indeed identical. Also, any complaint alleging a public agency's failure to implement the due process decision is to be resolved by the SEA. (§300.661(c)(3)).

Question 6: Since an SEA may not alter or interfere with a decision rendered by a due process hearing officer, how are situations handled when a subsequent complaint is filed with the SEA on similar issues?

Answer: An SEA may resolve an issue(s) raised in a complaint by informing the complainant in writing that the specific issue(s) has been decided in a due process hearing or subsequent administrative or judicial proceeding. If an issue(s) raised in the complaint is similar to -- but not the same as -- the specific issue resolved in a due process hearing, the SEA may not claim that the issue has been resolved in the hearing and must proceed to resolve the issue through its complaint management procedures. Similarly, if some -- but not all -- of the issues raised in the complaint have been resolved in a due process hearing, the SEA must use its complaint resolution procedures to resolve any issue that was not resolved in the hearing. (§300.661(c)).

Question 7: Does a dispute in an IEP meeting regarding the appropriateness of FAPE determinations made by a public agency amount to an allegation of a Part B violation which an SEA must resolve if a complaint is filed?

Answer: Yes. Under the IDEA, the SEA is responsible for ensuring that FAPE has been made available to children with disabilities. If a parent believes that what is offered during an IEP meeting to his or her child with a disability does not constitute FAPE and files a complaint, the State must resolve the complaint.

An SEA resolves a complaint challenging the appropriateness of a public agency's determination regarding a child's educational program or placement by determining not only whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with Part B requirements in light of the

individual child's abilities and needs. Thus, the SEA would need to review the evaluation data in the student's record or any additional data provided by the parties to the complaint and the explanation included in the public agency's notice to the parents as to why the agency made the challenged determination regarding the child's educational program or placement (and/or refused to make an alternative determination). If necessary, the SEA may need to interview appropriate individuals, to determine (1) whether the agency followed procedures and applied standards that are consistent with State standards, including the requirements of Part B, and (2) whether the determination made by the public agency is consistent with those standards and supported by the data. The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data.

Although decisions of the IEP team cannot be overturned by the SEA, the SEA can, on a case-by-case basis, if it concludes that what has been offered does not meet the definition of FAPE, order the IEP team to meet to determine FAPE for the child. In addition, parents always have the right to challenge the IEP team's decision by filing for a due process hearing and may seek to resolve their disputes through mediation.

Question 8: After the resolution of a State complaint, how must the SEA report its findings?

Answer: Each SEA is required to issue a written decision to the complainant that addresses each allegation in the complaint and contains: (1) findings of fact and conclusions, and (2) the reasons for the SEA's final decision. (§300.661(a)(4)). Further, to ensure corrective action, the SEA must inform the public agency of any findings of noncompliance and the required corrective action(s), and ensure that the corrective action is completed within a reasonable period of time. In addition, failure to ensure that the corrective action brings about compliance with the IDEA could result in actions taken against the SEA.

Question 9: May an SEA make mediation available when a State complaint is filed?

Answer: Yes. In the interest of building cooperative, collaborative relationships with all parties involved in the education of children with disabilities, States are encouraged to offer mediation when a State complaint has been filed, as well as when a due process hearing has been requested. An SEA may not require, but may request, that mediation take place before complaint resolution or a hearing. The SEA may not view the existence of ongoing mediation, in and of itself, as exceptional circumstances under §300.661(b). However, if the parties agree that the complaint resolution timeline should be extended because of mediation, the SEA may extend the timeline for resolution of the complaint.

Question 10: May a State complaint decision be appealed?

Answer: The regulations are silent as to whether a state complaint decision may be appealed. Part B neither prohibits nor requires the establishment of procedures to permit either party to request reconsideration of a State complaint decision.

Section 300.661 requires that the SEA issue a final decision on each complaint within 60 calendar days after the complaint is filed, unless the SEA extends the timeline because exceptional circumstances exist with respect to the particular complaint. This means that, absent an appropriate extension of the timeline for a particular complaint, the State must issue a final decision within 60 days. If that decision requires corrective action (s), the implementation of such corrective actions cannot be delayed pending any procedures for reconsideration of the decision.

A State may choose to establish procedures for reconsideration of complaint decisions that would result in a decision on the reconsideration within 60 days of the date on which the complaint was originally filed. Alternatively, a State may establish procedures for the reconsideration when the reconsideration process would not be completed until later than 60 days after the original filing of the complaint, but only if implementation of any corrective actions required in the SEA's final decision is not delayed pending the reconsideration process.

However, if the issue(s) is still in dispute, the parent or public agency may, if they have not already done so, initiate a due process hearing. A decision made in a due process hearing is final. However, any party to the hearing may appeal the decision to the SEA if the hearing was conducted by a public agency other than the SEA. (§300.510(b)). Under §300.512, any party aggrieved by the findings and decision made by a due process hearing officer under §300.507 or the discipline procedures at §§300.520-300.528 and who does not have the right to appeal under §300.510(b) has a right to bring a civil action with respect to the complaint.

Question 11: Under a State's complaint procedures, what are remedies for the denial of FAPE services?

Answer: In resolving a complaint in which there is a finding of a failure by a public agency to provide appropriate services, an SEA, through its general supervisory authority under Part B, is required, as appropriate, to provide remedies for the denial of services. The SEA must address: (1) how to remediate the denial of the services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and (2) appropriate future provision of services for all children with disabilities. (§300.660(b)).

Question 12: Must a State conduct an independent onsite investigation for every complaint filed?

Answer: No. An SEA is required to conduct an independent on-site investigation only if it determines that such an investigation is necessary. (§300.661(a)(1)).

Question 13: May an SEA's complaint investigation determine the appropriateness of an eligibility determination made by a public agency?

Answer: In resolving a complaint challenging the appropriateness of a public agency's eligibility determination, an SEA must determine not only whether the public agency has followed the required procedures to reach that determination, but also whether the public agency has reached a decision that is consistent with Part B requirements in light of the individual child's

abilities and needs. The SEA must determine whether the child was determined eligible based on evidence that he or she met the definition of "child with a disability" under §300.7 and fell within the age ranges specified at §300.300. To do so, the SEA would need to review the evaluation data in the student's record or any additional data provided by the parties to the complaint. In addition, the SEA would need to review the explanation included in the public agency's notice to the parents as to why the agency made the challenged eligibility determination (and/or refused to make an alternative determination requested by the parents or others). If necessary, the SEA may need to interview appropriate individuals, to determine (1) whether the public agency followed procedures and applied standards that are consistent with State standards, including the requirements of Part B, and (2) whether the public agency's eligibility determination is consistent with those standards and supported by the evaluation and other data included in the student's record or the information provided by the parties to the complaint. The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific data and is consistent with Part B.

Question 14: When did the removal of the requirement of Secretarial reviews take effect and what should an SEA develop in lieu of the Secretarial reviews?

Answer: The regulations took effect on May 11, 1999. Therefore, OSEP is returning requests for Secretarial reviews received after that date to the complainant. The final regulations do not require that a State establish a procedure to replace Secretarial reviews.

Question 15: How does an SEA resolve a complaint against its own self or its employees?

Answer: The SEA may either appoint its own personnel to resolve the complaint, or may make arrangements with an outside party to resolve the complaint. If it chooses to use an outside party, however, the SEA remains responsible for complying with all procedural and remediation steps required under the regulations.