

SPECIAL EDUCATION STATE COMPLAINT RESOLUTION PROCEDURES

Spring 2016



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION**

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www.education.pa.gov



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I. INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) complaint procedures are crucial to each State's exercise of its general supervisory responsibilities. They provide consumers with an important means of ensuring that the educational needs of their children are met and provide the State Educational Agency (SEA) with a tool to identify and correct non-compliances. As part of its general supervisory responsibility, a SEA must implement complaint resolution procedures in a matter consistent with Sections 300.151 – 300.153 in IDEA. The State complaint procedures, which are under the direct control of the SEA, have the potential for providing a less costly and more efficient means for resolving disputes than the due process hearing system. Therefore, effective implementation of the complaint resolution procedures may have a positive result for both parents and public education providers.

This publication outlines the procedures that are followed when complainants allege that the rights of one or more students eligible for services under the IDEA, Chapters 14 or 711 in the State Board Regulations or corresponding federal statutes or regulations have been violated. The IDEA requires the Bureau of Special Education (BSE) to encourage local and less adversarial resolutions to issues. However, federal regulations are clear that resolution activities cannot bar the complaint investigation process.¹

The purpose of these procedures is to:

1. Clearly articulate the process to be followed.
2. Serve as a reference guide and training document.
3. Ensure compliance with federal and state guidelines.

II. AUTHORITY

- A. 34 C.F.R. §300.151 *et seq.*
- B. 22 Pa. Code §14.107
- C. 22 Pa. Code §14.102 (a)(4) and Basic Education Circular (BEC)
- D. 22 Pa. Code §711.10

¹ The BSE reviewed the complaint procedures from other states in finalizing this document, and would like to specifically acknowledge the work of the Maryland State Department of Education and the Illinois State Board of Education.

III. PURPOSE

- A. The Pennsylvania Department of Education (PDE) adopts the following complaint investigation procedures for resolving complaints filed under the IDEA and corresponding federal and State law and regulations. It is the responsibility of the BSE and the PDE to resolve all complaints that meet the requirements of 34 C.F. R. §300.153 and are filed with the BSE in accordance with these procedures.
- B. The BSE monitors the completion of corrective actions issued as a result of a complaint investigation, and take steps necessary to ensure compliance with corrective actions, including providing technical assistance and taking additional enforcement actions, as set forth below.

IV. COMPLAINT REQUIREMENTS

Any organization or individual, including parents and students, hereafter the “complainant(s)”, including those from outside the Commonwealth of Pennsylvania, may file a complaint with the BSE. The BSE will also receive complaints received by other Divisions within the BSE or State or federal government officials, provided that the complaint meets the requirements set forth below.

- A. The complainant may use the State Complaint Form, which may be obtained from the BSE website at www.education.pa.gov or by calling the Consultline, toll free in Pennsylvania (800) 879-2301, outside of Pennsylvania (717) 541-4960 extension 3332, or the BSE (717) 783-6137. While there is no requirement to use this form, the complainant must include all of the information requested on the form, as it meets all of the requirements as set forth below.
- B. The complaint should be addressed to the BSE, Division of Monitoring and Improvement – East, 333 Market Street, 7th Floor, Harrisburg, PA 17126-0333.
- C. When a complaint is filed with the BSE, the complainant must forward a copy to the Local Educational Agency (LEA) or other public agency responsible for the student’s educational program. The LEA or other public agency is an educational agency at the local level that exists primarily to operate schools or to contract for educational services, including primary and secondary public and private schools. It is recommended that the complaint be sent to

the attention of the Director of Special Education or other responsible administrator for the program.

- D. The complaint must be in writing and signed by the individual making the complaint. The BSE will resolve complaints that have been received via facsimile or an attachment to e-mail if the complaint is signed and meets the requirements of Section IV, paragraphs E through I below (electronic signature cannot be accepted).

- E. The complaint must include the following:
 - 1. A statement that the LEA or other public agency has violated a requirement of IDEA, 22 Pa. Code, Chapters 14 or 711;
 - 2. The facts on which the statement is based (the complainant is encouraged to provide copies of any documentation that supports the allegation(s));
 - 3. The signature and contact information for the complainant;
 - 4. If alleging violations with respect to a specific student, the complainant must include:
 - a. The name and address of the student's residence;
 - b. The name of the school the student is attending;
 - c. In the case of a homeless student, available contact information for the student and name of the school the student is attending;
 - d. A description of the nature of the problem of the student, including facts relating to the problem; and
 - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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

- G. The statement that the LEA or other public agency has violated a requirement of IDEA and or 22 Pa. Code, Chapters 14 or 711 may be related to the identification, evaluation or educational placement of a student, or the provision of a free appropriate public education (FAPE) to the student, as well as any other allegation that the LEA or other public agency has violated IDEA and corresponding federal or State regulations.

Settlement agreements, mediation agreements, and agreements that are reached as the result of a due process related resolution meeting are enforceable in a State court of competent jurisdiction or in the district court of the United States, but will not be resolved by the BSE through the complaint process.

- H. If the complaint does not meet the requirements outlined in Section IV, paragraphs A through G of these procedures, the BSE will provide the complainant with the written notification that the complaint has been determined to be insufficient and that additional information is needed in order for the complaint to meet the requirements of the regulations and these procedures.
- I. If the complaint is filed on behalf of an individual and the complainant is not the student's parent, a release that is signed by the parent must be submitted by the complainant in order for the BSE to provide information about the student or family to the complainant. The release must be signed by the parent and state that consent is provided for the BSE to release information about the student to the complainant.

V. CORRESPONDENCE THAT WILL NOT BE INVESTIGATED THROUGH THE COMPLAINT PROCESS

- A. Allegations that the person refuses to put in writing or sign, despite the BSE's offers of assistance in preparing the complaint.
- B. Inquiries that seek advice and clarification regarding parental rights but which make it clear that no official action is to be taken.
- C. Anonymous correspondence.
- D. Courtesy copies of correspondence directed to another entity.

VI. COMPLAINT INVESTIGATION PROCEDURES

- A. Upon receipt of the complaint, the BSE will conduct an initial telephone interview with the complainant to confirm the information provided by the complainant, identify alleged violations, obtain additional information, if any, explain the LEA's or other public agency's opportunity to respond to the complainant, and explain the complaint management system.
- B. The complainant and the LEA or other public agency will be provided with written notification that acknowledges receipt of the complaint, identifies the allegation(s) subject to an investigation, indicates the timeline for resolution, informs the parties of the right to submit additional information relevant to the allegation(s), and identifies the BSE staff person assigned to resolve the complaint. The written notification will also include a statement that if the complainant and the LEA or other public agency reaches an agreement to resolve the complaint, and the LEA submit to the BSE a completed Report of Complaint Resolution signed by the complainant and the LEA or other public agency, the BSE will consider the matter resolved. The BSE encourages the parties to take steps to resolve the complaint as early as possible.
- C. Upon receipt of the first written complaint in a given school year by a particular complainant, the LEA or other public agency against whom the complaint is filed will forward a copy of the procedural safeguards to the complainant.
- D. The LEA or other public agency subject to the complaint is encouraged to review the allegation(s) with appropriate school personnel. If the school responds to the allegation(s), they must address each alleged violation, provide the facts as determined by the LEA or other public agency, and if a violation is identified, propose corrective actions or describe actions that have been taken to remediate any loss of services to the individual student. If the violation affected similarly situated students, the LEA or other public agency will propose corrective actions to remediate any loss of services to those students.
- E. The BSE will conduct an independent on-site review if the BSE determines that a site visit is necessary to resolve the complaint.
- F. The BSE will not resolve the complaint without using its best efforts (i) to interview the parent or student, and (ii) if the complainant identifies

persons alleged to have actual knowledge of the facts, to interview a reasonable number of such persons at the BSE's discretion.

G. The BSE will issue a written complaint investigation report (CIR) to the complainant and the LEA, which includes:

1. Specific complaint issue(s);
2. Applicable regulatory authority;
3. Source of information including all documents reviewed and individuals interviewed;
4. Findings of fact and a conclusion for each allegation investigated, including a statement of whether or not a violation of State or federal law has occurred, and the reasons for the conclusion;
5. If the BSE determines that a violation of State or federal law occurred, the CIR will include the corrective actions the LEA or other public agency must take to address:
 - a. how to remediate the denial of any services, including as appropriate, the awarding of compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student;
 - b. appropriate future provision of services for all students with disabilities to insure that the violation will not reoccur; and
 - c. timelines for completing corrective actions. All corrective actions ordered in the CIR must include a date by which each corrective action must be completed or implemented. The date will likely be within 45 to 60 days, but no later than one year from the date of issuance of the CIR.
6. When corrective action is ordered in the CIR, the BSE will send a copy of the Special Education Compliance BEC and a Failure to Implement Corrective Action form with the CIR to the complainant and the LEA or other public agency.

- H. The CIR is considered late if it is not issued within 60 calendar days of the date the complaint is received by the BSE. The timeline may be extended if exceptional circumstances exist with respect to a particular complaint or the complainant and the LEA or other public agency involved agree to extend the time to engage in mediation or other alternative means of dispute resolution. If an extension is necessary, the complainant and LEA or other public agency will be notified, in writing, by the BSE of the need for the extension.
- I. If either party disagrees with the conclusions in the CIR, the party has the right to submit additional information, ***which was either not considered or not available at the time of the investigation.*** This information must be submitted within 10 calendar days of the date of the CIR. The BSE will determine if the additional information is sufficient to warrant a review of the conclusions reached as a result of the investigation. Upon determining the sufficiency of the information, the BSE will notify the parties in writing of its decision to reconsider the conclusions reached.
- J. Once the complaint investigation report becomes final, BSE staff will require the LEA or other public agency to implement all corrective action.
- K. Documentation submitted by the LEA or other public agency to verify completion of the corrective action will be forwarded to the complainant by the BSE. The complainant may submit a written reaction to the BSE within 10 calendar days of the submission of the documentation to the complainant.
- L. BSE staff maintains a log of the contact with the complainant and the LEA or other public agency related to implementation of the corrective action.

VII. EARLY INTERVENTION (AGE 3-5) COMPLAINTS

If the complaint includes an allegation that a Mutually Agreed Upon Written Agreement (MAWA), an agency providing special education early intervention services and programs, has violated a requirement of IDEA, 22 Pa. Code Chapters 14, 711 or Act 212 of 2009, the Office of Child Development and Early Learning (OCDEL) is responsible for the state complaint resolution process. The BSE will forward the complaint to:

Office of Child Development and Early Learning (OCDEL)
Bureau of Early Intervention Services (BEIS)
Pennsylvania Department of Education
333 Market Street, 6th Floor
Harrisburg, PA 17126-0333
Phone: (717) 346-9320
Fax: (717) 346-9330

VIII. COMPLAINTS OUTSIDE THE BSE AUTHORITY

If the complaint includes allegations of discrimination based on race, creed, sex, age, color, national origin, marital status or conduct addressed by regulations and laws other than the special education law or regulations, the BSE will notify the parties in writing of the allegations that are not within the BSE's authority to investigate. In that notification, the BSE will provide the complainant with the name and address of the appropriate agency with jurisdiction over those specific allegations, if known.

Questions of discrimination or civil rights may be referred to:

Pennsylvania Human Relations Commission
333 Market Street, 8th Floor
Harrisburg, PA 17101-2210
Telephone: (717) 787-4410 voice
(717) 787-7279 TTY
Website: www.phrc.pa.gov

Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: (215) 656-8541
Email: OCR.Philadelphia@ed.gov

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: (800) 421-3481
TDD: (800) 877-8339
Email: OCR@ed.gov

Questions on educator misconduct may be addressed to:

Pennsylvania Department of Education
Office of Chief Counsel
Attn: Legal Assistant
333 Market Street, 9th Floor
Harrisburg, PA 17126-0333
Telephone: (717) 787-5500

The BSE does not investigate allegations that an agreement reached through due process related mediation or a resolution meeting has not been implemented. Any such complaint should be filed in a court of competent jurisdiction to be resolved.

IX. COMPLAINTS FILED UNDER THIS SECTION AND DUE PROCESS HEARINGS

- A. If a complaint is received that is also the subject of a due process hearing or contains multiple allegations of which one or more are part of a due process hearing, the BSE must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any allegation in the complaint that is not part of the due process hearing complaint will be resolved in accordance with the BSE complaint procedures and applicable timelines. The BSE will notify the parties in writing of the decision to set aside allegations and which allegations, if any, will be resolved through the complaint process.

For additional information on due process hearings, contact:

Office for Dispute Resolution
6340 Flank Drive
Harrisburg, PA 17112-2793
Telephone: (800) 222-3353
Email: odr@odr-pa.org

- B. If an allegation is raised in a complaint filed with the BSE that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on the parties, and the BSE will inform the complainant and the LEA or other public agency to that effect.

X. COMPLAINT RESOLUTION

Upon receiving signed notification from both parties that the complaint has been satisfactorily addressed by the LEA through mediation or other means of dispute resolution, or has been withdrawn by the complainant, the BSE will consider the complaint resolved.

XI. VERIFICATION ACTIVITIES/COMPLAINT FOLLOW-UP

When the BSE issues a CIR that identifies a violation of federal or State law or regulation, the BSE will require the LEA or other public agency to submit documentation verifying the completion of the corrective action(s).

The BSE will send a 10-day reminder letter to the LEA or other public agency, reminding it of the deadline and that documentation submitted to the BSE within 10 calendar days.

If the corrective action is not received by the due date the following steps are taken:

1. Within five calendar days after the due date for corrective action, the Special Education Adviser will contact the complainant (by telephone and in writing) and the LEA or public agency to verify completion of the corrective action and to obtain written assurance and documentation from the LEA or public agency. This documentation will be described in a letter to the complainant and the complainant will be provided with information about how to contact BSE if the complainant believes the corrective action has not been implemented.

2. Within 10 calendar days after the due date of corrective action, the Division Chief will contact the Superintendent, Chief Executive Officer, or Executive Director of the LEA or other public agency in writing to determine the actions needed to implement the required corrective action and assign a due date for finalizing corrective action. Proposals made by the LEA or other public agency related to compliance with the corrective action mandated by a CIR will be shared with the complainant.
3. Within 20 calendar days after the due date of corrective action, the Bureau Director will schedule a meeting in the PDE which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance. Bureau personnel in attendance at this meeting will include the Bureau Director (or designee), Special Education Adviser, Division Chief, and, if requested, an attorney from the Office of Chief Counsel. At the discretion of the Bureau Director, other individuals may be required or invited to attend, including the complainant. The complainant will be informed of this meeting.
4. Within 10 calendar days of this meeting, the BSE will issue a letter summarizing the results of this meeting (i.e., either confirming the LEA's or other public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the BSE intends to impose). The BSE will send a copy of the letter to the complainant.

If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in the CIR, the BSE will take enforcement action.

- A. Either party may request technical assistance, pursuant to the CIR. The request for technical assistance must be made in a timely manner as to not delay completion of the corrective actions.
- B. The BSE staff will review the steps taken and determine if they satisfy the required actions.
 1. If the steps taken satisfy the corrective action(s), the BSE will provide written notice of

its decision to the parties and close the complaint.

2. If the actions taken by the LEA or other public agency do not satisfactorily correct the identified problem(s), the BSE will work closely with the LEA or other public agency to determine why the actions taken did not achieve required results and determine additional strategies to attain the desired results.
3. If the LEA or other public agency has not completed the corrective action(s) within the specified timeframe, the BSE will provide the LEA with written notice of the enforcement sanctions, as specified by these procedures.

XII. ENFORCEMENT

When the LEA has not completed the corrective action(s) by the date specified in the CIR or by the date of any extension granted in accordance with Section XI of these procedures, the BSE will initiate enforcement actions in accordance with 22 PA Code §14.102(a)(4) and the related Special Education Compliance BEC.

XIII. PUBLIC AWARENESS EFFORTS

- A. Public agencies must ensure that the complaint procedures are explained to parents, advocates and school personnel, including the procedural safeguards.
- B. The BSE disseminates the complaint procedures through information made available to advocacy organizations, LEA or other public agency personnel, and others as requested. The BSE has provided information and presentations to advocacy and parent organizations, including the Disability Rights Pennsylvania, Protection and Advocacy for Individuals with Developmental Disabilities, and State and Local Task Forces. The procedures are also available on the PDE website.