

Guidelines: **Formal State Complaint Procedures for Students with Disabilities**

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EXCEPTIONAL CHILDREN
NC Department of Public Instruction

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The Individuals with Disabilities Education Improvement Act (IDEA 2004) requires the State Educational Agency (SEA) to adopt written procedures for the investigation and resolution of any formal written complaint alleging that a public agency has violated a requirement of the IDEA.

This document specifies the procedures used by the North Carolina Department of Public Instruction, Office of Exceptional Children (OEC) in the investigation and resolution of formal written complaints under the IDEA, the IDEA federal regulations, North Carolina General Statutes (GS) Article 9, Part 1A-1E, of Chapter 115C, and/or North Carolina Policies Governing Services for Children with Disabilities.

Purpose

The North Carolina Department of Public Instruction (NCDPI), Office of Exceptional Children (OEC) adopts the following complaint investigation procedures for the purpose of resolving complaints filed under the Individuals with Disabilities Education Improvement Act (IDEA), its corresponding federal regulations, Chapter 115-C, Article 9 of the NC General Statutes (GS), and North Carolina Policies Governing Services for Children with Disabilities (Policies). It is the responsibility of the NCDPI to resolve all complaints that meet the requirements of 34 CFR §300.153 and are filed with the OEC in accordance with these procedures.

It is the responsibility of the OEC to monitor the completion of corrective actions issued because of a complaint investigation, as well as to take steps necessary to ensure compliance with corrective actions, including technical assistance and taking additional enforcement actions, as appropriate.

Distribution of State Complaint Procedures

The OEC will ensure the State Complaint Procedures are available to parents, organizations, public agencies, and general public by posting them on the OEC's website at:

<https://www.dpi.nc.gov/districts-schools/classroom-resources/exceptional-children/dispute-resolution>

A copy will also be distributed to each of the following organizations: Exceptional Children's Assistance Center, Family Support Network of North Carolina, Legal Aid of North Carolina, Disability Rights North Carolina, North Carolina Families United (Statewide Family Network and the State Chapter of the National Federation of Families); Children's Law Clinic at Duke Law School; and two non-profit Centers for Independent Living in NC: Alliance of Disability Advocates (ADANC); and Disability Rights and Resources (DRR) and mailing or emailing a copy to individuals and organizations upon request.

In compliance with federal law, the NC Department of Public Instruction administers all state-operated programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color, age, military service, disability, or gender, except where exemption is appropriate and allowed by law

Authority

The IDEA Federal Regulations 34 CFR §300.151 et seq. located at:

<https://www.ecfr.gov/current/title-34/subtitle-B/chapter-III/part-300#sp34.2.300.a>

North Carolina Policies Governing Services for Children with Disabilities (*Policies*):

[NC Policies Governing Services for Children with Disabilities-Revised March 2021](#)

Article 9 of the NC General Statutes (GS): <https://www.ncleg.gov/Laws/GeneralStatuteSections/Chapter115C>

Filing a State Complaint

Any organization or individual, hereafter the "complainant(s)," including those from outside the State of North Carolina, may file a complaint.

Public agencies include the SEA, Local Education Agency (LEA), including charter schools and State-operated Programs (SOPs) that are responsible for providing education to children with disabilities.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

A due process hearing decision is enforceable by the SEA through the State complaint process, in any State court of competent jurisdiction, or in a district court of the United States. [§ 300.537; §115C-109.4; and NC 1504-1.7; 1504-1.11(d)(2); 1504-2.8]

Required Information

****If the required information listed below is missing from a complaint, the complaint will be deemed insufficient, and the reason why will be included in the response notification. The complainant may file a new complaint inclusive of the missing information.***

The complaint must include:

- A statement that a public agency has violated a requirement of Part B of the IDEA or the Part B regulations.
- The facts on which the statement is based.
- The signature and contact information for the complainant (mailing address, telephone number(s), and email address).

If the complaint alleges a violation **with respect to a specific child**, the complaint **must also include**:

- The child's full (first and last) name.
- The address where the child resides.
- The name of the school the child is attending.
- The name of the school and/or LEA the student was attending if different at the time of the violation.
- In the case of a homeless child or youth, available contact information for the child's parent/guardian (if a minor) and the name of the school the child is attending.
- A description of the alleged violation concerning the child, including detailed and specific facts related to the issue of concern.
- A proposed resolution to the alleged violation to the extent known and available to the complainant at the time the complaint is filed.

The complainant ***is required to*** send a copy of the complaint to the Superintendent of the LEA or Head of School of the charter school serving the child at the time the dispute occurred, at the same time the complaint is filed with the SEA.

The complainant may use the State Complaint Form located on the OEC website at:

<https://www.dpi.nc.gov/districts-schools/classroom-resources/exceptional-children/dispute-resolution>

There is no requirement to use the model form; however, the written complaint must contain all the required information identified in the form and described on the previous page. A complaint that does not meet the content requirements described above may be dismissed for being insufficient, and a new complaint will need to be filed with the required information. This includes confirmation that a copy of the complaint has been sent to the Superintendent of the LEA or Head of School of the charter school.

If the **only** missing information in the complaint is confirmation that a copy of the complaint has been sent to the public agency, as described above, the SEA will request that the complainant confirm that a copy of the complaint was sent to the public agency prior to initiating the investigation.

A signed, written complaint may be submitted by:

1. Mailing to: Section Chief: IDEA Dispute Resolution
 North Carolina Department of Public Instruction 6356 Mail
 Service Center
 Raleigh, NC 27699-6356
2. Emailing to: state_ec_complaints@dpi.nc.gov
 - o Formats accepted via email include but are not limited to: PDF files, emails containing all required information, photos of the completed state complaint form

Confidentiality

If the complaint is filed on behalf of an individual student and the complainant is not the student's parent (as defined by the IDEA), a written release of confidential information must be signed by the parent, or the student (if rights have been transferred), and submitted to the investigator for the complainant to receive a copy of the Letter of Findings.

The complainant should provide the contact information for the parent(s), i.e., mailing address, telephone numbers, and email address.

Intake Process

The complainant and the public agency shall be provided with written notification (Intake Letter) that:

- Acknowledges receipt of the complaint.
- Identifies the issue(s) subject to an investigation.
 - o *An issue is a statement or statements containing sufficient factual detail (e.g., who, what, when, where, how), that a public agency has done something wrong, that if true, would be a violation of the IDEA or its implementing regulations.*
- Identifies any issue(s) not subject to an investigation and why.
- Identifies the OEC investigator assigned to investigate the complaint.
- Notifies both parties that the investigation report (Letter of Findings) will be issued on or before the closure of the 60-day timeline.
 - o *The 60-day timeline begins on the business day the complaint is received.*
 - o *Business day is defined as Monday through Friday, 8:00am to 5:00pm. Before 8:00am or after 5:00pm Monday through Friday, State holidays, Saturdays, and Sundays are not considered business days. If received on a non-business day, the 60-day timeline will begin the next business day.*
- Encourages the parties to take steps to resolve the complaint as early as possible at the local level through informal means of dispute resolution.
- Advises the complainant and the public agency that the public agency has fifteen (15) calendar days after receiving the written notification of intake from the OEC to develop and submit a proposal to resolve the complaint and for the complainant and public agency to engage in dispute resolution at the local level.
- Advises the complainant and the public agency of their right to request mediation.
- Includes, for the complainant, a statement of the complainant's right to submit additional information relevant to the identified issue(s) within fifteen (15) calendar days of receiving the written notification, and the most recent copy of, or the link to, the *Parents Rights and Responsibilities in Special Education: Notice of Procedural Safeguards*; and
- Includes, for the public agency, a notice to submit its written response² and requested documents within fifteen (15) calendar days of receiving the written notification. The documents and narrative must be received by the OEC no later than the 15th calendar day.
 - o *34 CFR § 300.211 - Information for SEA: The LEA must provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to 34 CFR §§ 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act.*

The public agency named in the complaint is encouraged to review the issue(s) raised with the appropriate school system personnel and provide a thorough written response to each issue that includes:

- The facts determined by the public agency.
- Any violation(s) identified, and a proposal of corrective action(s) and/or corrective actions already taken.
- Actions proposed or taken to provide compensatory services for any loss of services to the individual student and any other students affected by the violation(s).

The SEA is responsible for reviewing all relevant information and making an independent determination as to whether the public agency has violated the IDEA. The investigation may include, but is not limited to, an onsite visit, staff and parent interviews, and review of electronic educational records.

² A copy of the public agency's narrative response to the complaint is available upon request.

State Complaints and Due Process Petitions

If a complaint is filed with the same alleged violations raised in a due process petition, the OEC must set aside any part of the complaint that is being addressed in the due process hearing. The complaint timeline will stop. When the due process case is closed, the OEC will review the outcome of the due process and either:

- close the complaint and notify the parties in writing; or
- proceed with the investigation and issue an investigation report (letter of finding).

The OEC will notify the parties in writing of the decision to set aside allegations, and which allegations, if any, will be resolved through the formal state complaint process.

Any alleged violation in the complaint that is not part of the due process petition will be resolved in accordance with formal state complaint procedures and applicable timelines.

If a complaint raises an alleged violation that was previously addressed in a due process hearing involving the same parties, the decision from that hearing is final and binding. The OEC will notify both the complainant and the public agency accordingly.

Insufficient Complaints

If the complaint does not meet the required information outlined on page 4, including those complaints that contain allegations outside of DPI's authority, such as promotion and retention, the OEC shall provide the complainant and Superintendent or Head of School with written notification that the complaint has been determined insufficient and will not be investigated. If applicable, the additional information needed for the complaint to meet the requirements in the IDEA will be indicated and the complainant has the right to file a new complaint inclusive of all required information.

Systemic Complaints

A systemic complaint is a complaint that alleges that a public agency has a policy, practice, or procedure that is applicable to a particular group, category, or similarly situated children. DPI is required to resolve any complaint that meets the requirements of NC 1501-10.3. Systemic complaints are expected **to state the policy, practice, or procedure** implemented in the LEA or charter school that constitutes the alleged violation, and the facts upon which the alleged violation is based.

If the complaint does not meet the required information outlined on page 4, the complainant and public agency will be notified of the insufficiencies, and the complainant will have the option to file a new complaint as indicated above.

Unlike an individual complaint, no proposed resolution of the problem is required. However, it is recommended that the complainant state the proposed resolution to facilitate resolving the complaint.

Systemic complaints address broad violations of special education laws, policies, or procedures that potentially impact multiple students or reflect a pattern of noncompliance. These complaints do not focus on concerns related to a single student's services or educational experience, but rather on issues that suggest a widespread problem affecting a group of students or an entire program.

Early Dispute Resolution

Upon receipt of a written request and agreement with both parties, the OEC may grant a specific extension³ of the sixty (60) calendar day timeline if the parties are actively involved in the early resolution process.

- Both parties are encouraged to engage in early dispute resolution by requesting Mediation or a Facilitated IEP Team Meeting to resolve the issues identified for investigation.
- The following resources are available for early dispute resolution and are posted on the Office of Exceptional Children website under [Dispute Resolution](#).
 - o [Mediation](#) - mediation@dpi.nc.gov
 - o [Facilitated IEP Team Meeting](#) – facilitation@dpi.nc.gov
- The parties may also choose to engage in mediation and alternative dispute resolution methods consistent with NCGS § 115C-109.4.[PL3]

Written request for an extension for the above-named reasons may be submitted to the OEC via email at: state_ec_complaints@dpi.nc.gov

Dispute Resolution Mechanisms

	Facilitated IEP Meeting	Mediation
Type of Process	Informal IEP meeting process with a neutral facilitator who manages the meeting process and communication.	Formal dispute resolution provides the parties an opportunity to resolve issues with the assistance of a trained mediator.
Key Features	<ul style="list-style-type: none"> Facilitation is a voluntary process; therefore, <u>both parties must agree to participate</u>. All required members of an IEP team, inclusive of the parent(s)/guardian(s), participate as part of a facilitated IEP meeting. 	<ul style="list-style-type: none"> Mediation is a voluntary process; therefore, <u>both parties must agree to participate</u>. Mediation typically occurs with key members of the local education agency and the complainant. While not required, the parties may choose to have legal representation during mediation.
Role of Facilitator/ Mediator	<ul style="list-style-type: none"> Facilitator conducts intake with both parties, sets the meeting agenda, monitors participation, ensures focus on student needs Facilitator helps process only; does not participate in decision-making or provide policy guidance 	<ul style="list-style-type: none"> Mediator facilitates discussion, helps clarify issues, may caucus Mediator does not determine outcome If legal representation is present, they typically draft the agreement; if not, the mediator may fill in a pre-made form
Cost	No cost to families or LEA.	No cost to families or LEA.

³ 34 CFR 300.151.(b)(1)(ii) allows an extension of the 60-day timeline if the parties are involved in alternative dispute resolution options, including mediation, if the complainant and public agency agree in writing.

⁴ The public agency must inform the investigator regarding the timing and status of all dispute resolution processes.

State Complaint Withdrawal Process

If a complainant decides to withdraw the complaint, the request to withdraw must be put in writing and submitted to the OEC. The complainant may mail or email the withdrawal request to the local EC Administrator, and to either the complaint investigator or the state complaint email address on page 5.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written agreement that sets forth the resolution and states that 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. For the agreement to be legally binding, it must be in writing. The agreement must be signed by both the parent and a representative of the public agency who has the authority to bind the agency. [34 CFR §300.506(b)(6)]. If the parent decides to withdraw the complaint as part of the mediation agreement, the mediation results form must indicate the parent's decision to withdraw the complaint.

Once the written request to withdraw or the mediation results form (indicating the parent's decision to withdraw the complaint) is received, the OEC will close the complaint and provide a withdrawal letter to the parties.

Investigation Process

The investigator will conduct an independent review of all relevant information and documents provided by the complainant and the public agency. During the investigation, the investigator may request additional documentation, conduct individual interviews, and/or conduct an on-site visit.

Upon identifying any ancillary issue(s) during the investigation, the investigator shall notify either the EC Administrator and/or an OEC consultant. The ancillary issue(s) shall be addressed through a monitoring process, a technical assistance activity, or be added to the complaint investigation and letter of findings. If the ancillary issue is added to the complaint, the complaint investigator will notify both parties in writing and each will have an opportunity to provide additional documentation within the time frame established by the investigator.

The sixty (60) day timeline may be extended only if exceptional circumstances exist with respect to a particular complaint as determined by the OEC.

If an extension is deemed necessary, the complainant and public agency shall be notified, in writing, by the OEC.

Investigation Report

The investigation report, also known as a Letter of Findings (LOF), shall include:

- A statement of the issue(s) investigated.
- Findings of fact.
- Applicable federal and state laws, regulations, and/or policies.
- An analysis and conclusion for each issue investigated, including a statement of whether a violation of federal and state laws, regulations, and policies occurred, and the reasons for the conclusion.

If the public agency is found to be **compliant** with the applicable federal and state laws, regulations, and/or policies, the complaint will be closed.

If the public agency is found to be **noncompliant**, the report shall include a corrective action plan that the public agency must implement to address the findings of noncompliance, including, but not limited to:

- Remediation for the denial of any services, including as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student.
- Appropriate future provision of services for all students with disabilities impacted.
- Timelines for completing corrective actions.
- Documentation required for verifying the completion of the corrective action.
- An OEC contact person for technical assistance in completing the corrective actions.

The OEC will issue the investigation report (Letter of Findings) to the complainant and the Superintendent or Lead Administrator of the public agency within sixty (60) days of the date the complaint was filed with the OEC.

Corrective Action Plan

The public agency must report completion of the corrective action(s) to the assigned OEC staff by the date(s) set forth in the Corrective Action Plan (CAP). The date(s) may be extended at the discretion of the OEC but shall not exceed one (1) year from the issuance of the investigation report. On a case-by-case basis, circumstances may warrant:

- Issuing corrective action beyond the one-year period; and/or
- Extending the time periods identified in corrective action due to a change in circumstances or for good cause, as determined by the complaint investigator.

Noncompliance concerning a child-specific requirement for corrective action may be amended, at the discretion of the complaint investigator, for good cause. For example, when a child is no longer within the jurisdiction of the public agency, certain actions may not be feasible to implement, and/or may be inappropriate. These will be considered on a case-by-case basis in consideration of all facts available at the time.

If the corrective action plan is amended, the complaint investigator or corrective action coordinator will inform the complainant and the public agency, in writing, including the specific revisions, e.g., revised due dates. Following confirmation that any corrective actions requiring individual services for the student have been implemented, a letter closing the case will be sent to the Superintendent (or lead administrator of the public agency), EC Administrator, and the complainant.

If the required corrective actions and/or supporting documentation have not been received by the OEC by the final due date, the continued non-compliance may result in one or more of the following actions being taken:

- Additional corrective action(s) assigned.
- Recommendation for targeted monitoring.
- Removal of the student(s) from the public agency's current headcount.
- Withholding of additional federal and/or state funding.
- Other sanctions, as appropriate.

To ensure corrective action, and pursuant to its general supervisory responsibilities in 34 CFR §§300.149 and 300.600, the SEA must inform the public agency that is involved in the complaint of any findings of noncompliance and the required corrective action and ensure that the corrective action is completed within the timeframe specified in the SEA's written decision, and in no case later than one year of the State's identification of the noncompliance. [34 CFR §300.600(e).