



south dakota
DEPARTMENT OF EDUCATION
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SOUTH DAKOTA SPECIAL EDUCATION PROGRAMS QUESTIONS AND ANSWERS ABOUT STATE COMPLAINTS

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Much of the following information is adapted primarily from a module within the *Building the Legacy* training curriculum on IDEA developed by NICHCY—specifically, [Module 18](#), *Options for Dispute Resolution*.

NICHCY – the National Dissemination Center for Children with Disabilities has excellent information on many topics as well as a superb set of training modules. You can find NICHCY at

<http://nichcy.org>

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Who may file a state complaint?

A state complaint may be filed by an organization or individual, including an organization or individual from another state.

This is an important difference between state complaints and [mediation](#) and [due process complaints](#). Those two dispute resolution options—due process complaints and mediation—require either the child’s parent or the public agency to initiate the process.

The person who files a State complaint is referred to as the “complainant.” This term is used throughout this document.

Where does IDEA talk about state complaint?

The 2004 Amendments to the IDEA (by this, we mean the statute itself, as passed by Congress) and prior versions of that statute do not include State complaint procedures. Rather, it is IDEA’s final Part B *regulations* and their predecessors that have required each state to adopt written state complaint procedures. These regulations are found at §§[300.151 through 300.153](#) and will be excerpted at relevant points in this document.

South Dakota Administrative Rules also addresses state complaints and can be found at <http://legis.state.sd.us/rules/DisplayRule.aspx?Rule=24:05:15> Chapter 24:05:15.

What written procedures are states required to adopt?

Among other things, the written procedures that a state adopts must:

- provide a way for individuals and organizations to file a state complaint with the State Education Agency (SEA); and

These procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Because the SEA has a general supervisory obligation and authority for special education systems in the state, its procedures for resolving state complaints must include remedies when a failure to provide appropriate services is found. This includes:

- corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- how appropriate services for all children with disabilities will be provided in the future.

Thus, as the Department of Education has observed, state complaint procedures are directly under the control of the SEA, and provide parents and the school district “with mechanisms that allow them to resolve differences without having to resort to a more costly and cumbersome due process complaint, which by its nature, is litigious.” (71 Fed. Reg. 46606)

What information must a state complaint include?

First, a state complaint must be *signed* and *written*. It must also include the content described at §300.153(b), which can be summarized as follows:

- a statement that the school system has violated a requirement of Part B of IDEA;
- the facts on which this statement is based;
- the signature and contact information for the complainant.

If the alleged violation is with respect to a specific child, the complaint must also include:

- the name and address of the child;
- the name of the school the child is attending;
- a description of the “nature of the problem of the child,” including facts related 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.

Each SEA must develop a model form to assist parents and other parties in filing a state complaint . However, the SEA or local educational agency (LEA) may *not* require the use of its model forms. Another form or document may be used so long as the form or document includes the content required for filing a state complaint. [§300.509(b)]

And the complaint is filed with the SEA?

Yes. But it’s also important to note that the complainant must also send a copy to the LEA or school system serving the child at the same time the state complaint is filed with the SEA. This is a new provision, found at §300.153(d).

Why was this new provision added? As the Department of Education explains:

The purpose ... is to ensure that the public agency involved has knowledge of the issues and an opportunity to resolve them directly with the complaining party at the earliest possible time. The sooner the LEA knows that a complaint is filed and the nature of the issue(s), the quicker the LEA can work directly with the complainant to resolve the complaint.
(71 Fed. Reg. 46606)

What happens if the complainant doesn't include all required information?

This question arises because IDEA's due process procedures specify what must occur if the SEA receives a due process complaint that is insufficient [see §300.508(d), "Sufficiency of complaint"]. Unlike due process, however, the Part B regulations governing the state complaint process do not even *mention* "sufficiency of complaint."

The Department of Education (2009) addressed this issue directly in its *Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities*, saying:

[W]hen an SEA receives a complaint that is not signed or does not include contact information, the SEA may choose to dismiss the complaint. In general, an SEA should adopt proper notice procedures for such situations. For example, an SEA could provide notice indicating that the complaint will be dismissed for not meeting the content requirements or that the complaint will not be investigated and timelines not commence until the missing content is provided. (p. 2)

What is the SEA's obligation when it receives a state complaint?

The SEA must ensure that state complaints are resolved within 60 days from the date the complaint is filed (unless an extension of the timeline is permitted). Here's a rundown of the basic steps involved in resolving a State complaint.

- The SEA must carry out an independent investigation, if the SEA determines that an investigation is necessary.
- The SEA must give the complainant the opportunity to submit additional information about the complaint, either orally or in writing.
- The SEA must provide the public agency with the opportunity to respond to the state complaint.
- The SEA must review all relevant information, make an independent determination on the complaint, and issue a written decision to the complainant.
- The SEA must have procedures to ensure effective implementation of the SEA's final decision. [§300.152(a) and (b)(2)]

Is there a time limit for *filing* a state complaint?

Yes, indeed, there is—and it's different now than in earlier reauthorizations of the law and their regulations. Now:

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received...[§300.153(c)]

Previously, complaints could be filed for alleged violations that occurred up to *three* years prior to the date the complaint was received. The "one-year timeline is reasonable," the Department

explains, “will assist in smooth implementation of the State complaint procedures...[and will] help ensure that problems are raised and addressed promptly” (71 Fed. Reg. 46606).

How soon must the SEA resolve a State complaint?

As mentioned earlier, the SEA must resolve the state complaint within 60 days after the complaint is filed. The specific activities associated with resolving the complaint must take place within that time limit. This includes:

- conducting an independent investigation, if the SEA determines that an investigation is necessary;
- giving the complainant the opportunity to submit additional information, either orally or in writing;
- providing the public agency with the opportunity to respond to the complaint;
- having the SEA or the public agency responsible for resolving the complaint review all relevant information and make an independent determination; and
- issuing a final decision on the allegations in the state complaint.

The SEA’s complaint procedures must permit that 60-day timeline to be extended, only if exceptional circumstances exist or if the parent and the public agency agree to extend the time to engage in mediation (or other alternative means of dispute resolution, if available).

If the complaint is filed by an individual or organization other than the parent, the timeline may also be extended through agreement between the public agency and the other individual or organization filing a complaint if mediation (or other alternative means of dispute resolution) is available to the individual or organization under State procedures [§300.152(b)(1)(ii)].

This means that the fact that the parties agree to use mediation is not sufficient by itself to warrant an extension of the 60-day timeline. The complainant and the public agency must also *agree* to extend the timeline as a result of the decision to use mediation.

Must a State complaint be investigated if it’s resolved through mediation?

If the parties resolve the issues involved in a state complaint, the SEA need take no further action.

A bit of an explanation: An agreement reached through mediation is legally binding. Such an agreement is enforceable in an appropriate state or federal court and is not subject to the SEA’s approval. This is one reason why the Department of Education encourages parties to resolve complaints “at the local level without the need for the SEA to intervene” (71 Fed. Reg. 46605).

What happens if a state complaint and a due process complaint are filed to resolve the same issue?

According to IDEA's regulations, the SEA must set aside any part of the state complaint that is being addressed in the due process hearing until the conclusion of the hearing. But any issue in the state complaint that is *not* a part of the due process hearing action must be resolved using the time limit and state complaint procedures described above. These requirements are stated at §300.152(c)(1).

Under §300.152(c)(2), if an issue included in a state complaint has *previously* been decided in a due process hearing that involved the same parties, the due process decision is binding on that issue, and the SEA must inform the complainant to that effect.

Can the SEA's decision be appealed?

IDEA neither prohibits nor requires that a state's state complaint procedures include a way to appeal the SEA's decision on a state complaint. The Department observes that "States are in the best position to determine what, if any, appeals process is necessary to meet each State's needs, consistent with State law" (71 Fed. Reg. 46607).

Regardless of the state's policies regarding appeal of the SEA's final decision, the Department makes sure to point out (*Id.*), after that decision is issued, a party who disagrees with it (and has the right to request a due process hearing) may initiate a due process hearing, given the following two conditions:

- that the subject of the State complaint involves an issue about which a due process hearing can be filed, and
- the two-year statute of limitations for due process hearings (or other time limit imposed by State law) has not expired.

Final Words: What's Changed?

The changes IDEA 2004 has brought to the procedures it requires states to adopt for filing and resolving state complaints include:

- a new requirement to forward a copy of the State complaint to the public agency serving the child;
- new content requirements for complaints; and
- a revised time limit for filing complaints.

These changes are all noteworthy and, together, will hopefully provide public agencies, parents, and others with streamlined and effective state complaint processes for resolving disputes.

The name of the school district the child is attending is required information. Additional information including the address and telephone number of the school where the child is attending is optional, but would be helpful in identifying responsible parties.

Section II: School Information:

School District of Residence:		
Mailing Address:	City:	
State:	Zip:	Phone:

If the alleged violations concern a specific child, the name and home address of the involved child.

Student(s) Name:		
Home Address:	City:	
State:	Zip	Disability (optional)
Contact information if child is homeless:		

State each of your concerns. You must include the facts that provide the basis of each concern. Such facts must include when the concern arose and who, or what circumstances, caused the concern. Also state, to the extent known, what you believe the school district should do to resolve each of your concerns. (Attach additional pages if needed.)

What is concern #1:

What are the facts:

What do you believe should be done to resolve this concern?

If you have additional concerns, please state: (a) each concern; (b) the facts that support each concern and (c) what you believe should be done to resolve the concern.

X _____

Signature of Person(s) Filing Complaint

Date

NOTE: Federal regulations provide that the school district has the discretion of offering a proposal to resolve the concerns presented in a complaint or offering to participate in voluntary mediation with the complainant. If the parties agree to (a) mediate any of the concerns presented and (b) to extend the 60 day time line for completion of a complaint investigation, a mediator will be provided by the South Dakota Department of Education, at no expense to the parties.

Upon receipt of a written, signed complaint, Special Education Programs will conduct an investigation and provide a written report of findings to the person or agency making the complaint and to the school district. If a violation is confirmed, the report will contain corrective actions and timelines to be followed by the school. The formal complaint report is final.

******Please Note******

Conflict is often inevitable, but it need not produce negative results. If the parent and school personnel are unable to resolve a conflict concerning a student with a disability, then mediation is an available option. Mediation is completely voluntary. It is **optional** for both parties. Mediation in special education is a process to assist parents and schools in resolving disagreements regarding a student's special education program. Mediation is at no cost to parents/guardians or the school district.

A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the student. This occurs at a non-adversarial meeting which is more structured than a parent school conference, but less formal than due process hearings. To find more information about mediations please visit http://www.doe.sd.gov/oess/sped_complaints.asp

I would like to request mediation before proceeding with this complaint _____ yes _____ no.

Administrative Rules of South Dakota

CHAPTER 24:05:15

STATE COMPLAINTS

Section

- 24:05:15:01 Repealed.
- 24:05:15:02 Complaint.
- 24:05:15:02.01 Remedies.
- 24:05:15:03 Complaint procedure.
- 24:05:15:04 Repealed.
- 24:05:15:05 Complaint against a school district.
- 24:05:15:06 Time limits.
- 24:05:15:07 Information about complaint procedures.
- 24:05:15:08 Complaints and due process hearings.

24:05:15:02. Complaint. A complaint is a written signed statement by an individual or organization, including an individual or organization from another state, containing a statement that the department of education or a school district has violated a requirement of federal or state statutes, rules, or regulations that apply to a program and a statement of the facts on which the complaint is based. The complaint must allege a violation that occurred not more than one year before the date the complaint is received by the department. The written signed statement shall also include:

- (1) The signature and contact information for the complainant; and

(2) If alleging violations with respect to a specific child:

(a) The name and address of the residence of the child;

(b) The name of the school the child is attending;

(c) In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;

(d) A description of the nature of the problem of the child, including facts related 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.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

24:05:15:02.01. Remedies. In resolving a complaint in which it has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part B of the IDEA, shall address:

(1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the student such as compensatory services or monetary reimbursement; and

(2) Appropriate future provision of services for all students with disabilities.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

24:05:15:03. Complaint procedure. An organization or individual may file a written, signed complaint with the state director of special education. The party filing the complaint shall forward a copy of the complaint to the school district serving the child at the same time the party files the complaint with the department.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

24:05:15:05. Complaint against a school district. If the complaint is against a school district, the following steps shall be taken:

(1) The state director of special education shall appoint a complaint investigation coordinator from the department's special education programs. The coordinator and any consultants may conduct an independent on-site investigation if it determines that one is necessary;

(2) The complainant may submit additional information, either orally or in writing, about the allegations in the complaint;

(3) The school district may respond to the complaint, including, at a minimum:

(a) At the discretion of the school district, a proposal to resolve the complaint; and

(b) An opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation consistent with this article;

(4) The complaint coordinator and any consultants shall make a recommendation to the state director of special education;

(5) After reviewing all relevant information, the state director of special education shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of special education shall submit a written report of the final decision to all parties involved;

(6) The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;

(7) If the complaint is valid, the state director of special education shall find the school district out of compliance with federal and state statutes and rules;

(8) If corrective action is not completed within the time limit set, including technical assistance and negotiations, the department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by the school district;

(9) When the school district demonstrates completion of required correction action, the department's Office of Finance and Management shall be notified by the state director of special education, and all moneys withheld shall be paid to the school district; and

(10) Documentation supporting the corrective actions taken by a school district shall be maintained by the department's special education programs and incorporated into the state's monitoring process.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 35 SDR 165, effective December 23, 2008; 36 SDR 96, effective December 8, 2009.

Cross-Reference: Department of Education Rules 34 C.F.R. §§ 300.151-153.

24:05:15:06. Time limits. All complaints must be resolved within 60 days after receipt of the complaint by the state director of special education except as stated in this section. The time limit of 60 days may be extended only under exceptional circumstances as determined by the state director of special education, such as the need for additional time to provide necessary information. Under these circumstances, an extension of time may not exceed 30 days in any one instance.

In addition, the 60-day time limit may be extended, if the parent, individual, or organization and the school district involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

24:05:15:07. Information about complaint procedures. The department's special education programs shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities about the state's complaint procedures by taking the following actions:

- (1) Conducting parent surveys through the state's monitoring process;
- (2) Providing copies of the state's procedures to parent and advocacy groups across the state;
- (3) Notifying local school districts through statewide memoranda;
- (4) Presenting state procedures at statewide conferences; and

(5) Disseminating copies to parent training and information centers, independent living centers, protection and advocacy agencies, and other appropriate entities.

Source: 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

24:05:15:08. Complaints and due process hearings. If a written complaint is received that is also the subject of a due process hearing under this article or contains multiple issues, of which one or more are part of that hearing, the department shall 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 time limit and procedures described in this chapter.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties the hearing decision is binding on that issue and the department shall inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the department.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

