

**DELAWARE DEPARTMENT OF EDUCATION
Exceptional Children & Early Childhood Group**

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**SPECIAL EDUCATION
STATE COMPLAINT PROCEDURES**

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Federal and state law permit persons or organizations to file a complaint with the Delaware Department of Education (“the Department”) concerning the education of children with disabilities in accordance with Part B of the Individuals with Disabilities Education Act (“IDEA”) and corresponding Delaware law. The Department has developed these procedures to inform parents, local educational agencies, and concerned citizens about the complaint process. The Department is responsible for investigating and resolving complaints that are filed with the Department in accordance with these procedures. The Department is also responsible for monitoring the completion of any corrective action issued as a result of a complaint investigation, including taking steps to ensure compliance with corrective action, such as providing technical assistance and taking additional enforcement actions, as appropriate.

FILING A STATE COMPLAINT

- A. State complaints may be filed by any person or organization. The complainant may use the Special Education State Complaint Form provided by the Department and available from the Department’s website at: <http://www.doe.k12.de.us>. Or, contact (302) 735-4210 to request the form be mailed to you. Persons or organizations who wish to file a complaint may, but are not required to use the form. A complaint must be in writing, signed by the complainant, and include the following:
- (1) A statement the school district, charter school, or other public agency violated a requirement of Part B of the IDEA, or the Department’s regulations concerning the education of children with disabilities;
 - (2) The facts on which the statement is based, including the time frame in which the incident(s) occurred;
 - (3) The signature and contact information for the complainant;
 - (4) If alleging violations regarding a specific student,
 - (i) the student’s name and address of residence;
 - (ii) the name of the school the student is attending;
 - (iii) in the case of a homeless child or youth (within the meaning of the McKinney-Vento Homeless Assistance Act), available contact information for the child;

- (iv) a description of the nature of the problem of the student, including facts relating to the problem;
 - (v) a proposed resolution of the problem to the extent known and available to the party filing the complaint at the time it is filed; and
 - (vi) a description of the attempts made to resolve the issue(s) prior to the filing of the complaint.
- B. The complaint must allege a violation that occurred not more than 1 year prior to the date the Department receives the complaint.
- C. The complaint and all attachments must be sent to the Director, Exceptional Children & Early Childhood Group, Delaware Department of Education, John G. Townsend Building, 401 Federal Street, Suite 2, Dover, DE 19901.
- D. The complainant must also send a copy of the complaint to the school district, charter school, or other public agency serving the student at the same time the complaint is sent to the Department of Education.

**DEPARTMENT RESPONSE
AND
INVESTIGATION PROCEDURES**

- A. Upon receipt of a complaint, the Department will stamp it as “received” and mark the date of receipt. The Department will appoint an investigator and send an acknowledgement letter to the complainant confirming the date the Department received the complaint. The letter will be copied to the school district superintendent or charter school director, and special education director. Included in the letter will be an offer for the complainant to submit additional information to the Department’s investigator regarding the complaint allegations, either orally or in writing.

The letter will also include information relating to the Department’s voluntary mediation program through the University of Delaware, Special Education Partnership for the Amicable Resolution of Conflict (“SPARC”). SPARC staff will contact the parties and offer the opportunity for mediation. Mediation is a voluntary process, and both parties must be willing to participate. Complaint timelines may be extended to permit mediation.

The Department will also provide the parents of a child with a disability a copy of the Notice of Procedural Safeguards upon receipt of the parents' first complaint in a school year. The Notice of Procedural Safeguards is also available on the Department's website at <http://www.doe.k12.de.us>.

- B. After the acknowledgment letter has been sent, the investigator will contact the complainant, and school district, charter school, or other public agency to discuss the complaint allegations, and proceed with the investigation.
- C. If the Department is not able to investigate the complaint, the Department will notify the complainant, in writing, within 10 business days of the receipt of the complaint.

Examples of reasons the Department may refuse to investigate a complaint:

- (1) The complaint is not signed.
 - (2) The complaint does not state a violation occurring within the last year.
 - (3) The complaint does not allege a violation under the IDEA, or federal or state special education regulations. For example, complaints alleging violations of Section 504 cannot be addressed through the IDEA complaint process.
- D. Within 60 days following the Department's receipt of an adequately detailed complaint, the Department will:
- (1) Conduct an independent investigation, including an on-site investigation, if it determines that one is necessary;
 - (2) Provide the school district, charter school, or other public agency with the opportunity to respond to the complaint, including, the chance to make a proposal to resolve the complaint, and an opportunity for the complainant and parties to agree to engage in mediation;
 - (3) Review all relevant information and make an independent determination as to whether the school district, charter school, or other public agency is violating Part B of the IDEA or corresponding Delaware law.; and
 - (4) Issue a written decision to the complainant that addresses each allegation in the complaint and includes findings of fact and conclusions, and the reasons for its final decision.

- E. The Department must complete its investigation and issue its written decision within 60 days following the Department's receipt of the complaint. The Department may, however, permit an extension of the 60 day timeline if exceptional circumstances justify a longer period, or the parties agree to extend the time for mediation or other alternative means of dispute resolution. The Department will notify both parties in writing if the Department extends the complaint timeline and the basis for finding exceptional circumstances.
- F. The Family Educational Rights to Privacy Act and state statutes and regulations apply to all aspects of the Department's investigation with regard to a student's personally identifiable information. If a person other than the parent or guardian of the student files the complaint, the complainant will receive a letter from the Department stating that without parental consent to release confidential information, the Department is not able to respond directly to the complainant regarding the complaint. If parental consent is not provided, the Department will proceed with an investigation, prepare a letter of findings, and issue the findings directly to the parent and school district, charter school, or other public agency. In the absence of parental consent to release confidential information, a redacted letter of findings will be sent to the complainant.
- G. If a complaint and due process hearing request are filed over the same dispute, the hearing takes precedence over the complaint procedure. If a complaint is the subject of a due process hearing or if the complaint contains multiple issues of which one or more are part of the hearing, the Department shall:
- (1) Communicate if necessary with the due process hearing chair to verify which issues are subject to the due process hearing;
 - (2) Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
 - (3) Resolve any issues in the complaint that are not part of the due process hearing involving the same parties.

Issues that are separate and distinct from a pending due process hearing shall be investigated and resolved within the 60 day time line. A complaint alleging the failure to implement a due process hearing decision may also be resolved by the Department.

LETTER OF FINDINGS

- A. Upon completion of the investigation, the Department will determine whether the school district, charter school, or other public agency complied with the applicable special education laws and regulations in a letter of findings. Determination of compliance or non-compliance on each issue shall be based upon the facts and applicable law. The Department shall notify the parties in writing of the findings and the basis for such findings.
- B. The letter of findings:
- (1) Summarizes the complaint issues, identifies the parties, and investigatory process;
 - (2) Makes findings of fact, based on the information received during the investigation;
 - (3) Draws conclusions, based on federal and state law regarding whether the school district, charter school, or other public agency is in compliance with the law;
 - (4) Specifies the corrective action ordered by the Department if the school district, charter school, or other public agency is found in non-compliance; and
 - (5) Closes the file if compliance is determined.
- C. If the parties are able to resolve the complaint through mediation or otherwise before the Department has issued a letter of findings, the district, charter school, or other public agency must provide a written statement of the resolution. The resolution statement must be signed by the complainant and must state the details of the resolution. If deemed sufficient, the investigator will incorporate the resolution into the letter of findings. The Department may also order corrective action if appropriate to ensure the future provision of services for other children.

CORRECTIVE ACTION PLAN

- A. If the Department finds non-compliance, the letter of findings shall specify steps which the school district, charter school, or other public agency must take to bring it into compliance.
- B. The Department shall specify through a corrective action plan how to remediate the denial of services or procedural violations which may include, but is not limited to, compensatory education, monetary reimbursement, staff training and professional development by the school district, charter school, or other public agency, and appropriate future provision of services for children with disabilities.
- C. The letter of findings shall specify time lines by which the school district, charter school, or other public agency is required to respond to the letter and initiate corrective action.
- D. In certain cases, the Department may direct the school district, charter school, or other public agency to develop a corrective action plan. The plan must include time lines and sufficient detail to describe how the violations will be corrected, and it must be approved by the Department.
- E. The Department is responsible for tracking and ensuring the implementation of corrective action plans ordered through the complaint process.
- F. When the school district, charter school, or public agency submits satisfactory documentation and evidence that all actions in the corrective action plan have been completed, the Department will notify the school district superintendent, charter school director, or director of special education and the complainant. The Department may also continue to monitor the school district, charter school, or other public agency and request additional action to ensure full compliance with federal and state regulations.

PUBLIC AWARENESS

- A. The Department disseminates these complaint procedures to school district, charter school, and public agency personnel, parents, the Governor's Advisory Council for Exceptional Citizens, and other advocacy groups, as requested. The Department also collaborates with the Parent Information Center of Delaware, Inc., and the Special Education Partnership for the Amicable Resolution of Conflict to ensure awareness of these procedures. The Department will also ensure these procedures appear on the Department's website, in addition to redacted complaint findings issued by the Department and listed by school year.
- B. Additional information can be found on the Department's website at <http://www.doe.k12.de.us>, or by calling (302) 735-4210.
- C. Federal regulations addressing the complaint process may be found at 34 C.F.R. §§ 300.151 through 153, and state regulations at 14 DE Admin Code §§ 923.51 through 53.0.