

**PROCEDURES FOR COMPLAINTS
IOWA DEPARTMENT OF EDUCATION
PUBLIC DISSEMINATION**

I. What is a “state complaint”?

A complaint is a signed, written statement alleging that a district and/or Area Education Agency (AEA) violated a requirement of the Individuals with Disabilities Education Act (IDEA) or a state law or rule that implements IDEA.

II. Who handles and investigates state complaints?

The Iowa Department of Education (DE) investigates complaints filed under the IDEA:

Complaint Officer, Bureau of Student and Family Support Services
Iowa Department of Education
400 E. Fourteenth Street
Grimes State Office Building
Des Moines, Iowa 50319

The complaint shall be investigated by Complaint Officer or designee and a decision written within 60 calendar days of receipt of the complaint (unless an extension is granted).

III. What are the requirements for filing a complaint?

1. *Who may file a complaint?* An organization or individual may file a signed, written complaint under the procedures described in 34 C.F.R. sections 300.151-300.152.
2. *What must a state complaint include?* The complaint must include:
 - A statement that a public agency has violated a requirement of Part B of the Act or of Part 300;
 - The facts on which the statement is based;
 - The signature¹ and contact information for the Complainant; and
 - If alleging violations with respect to a specific child:
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including facts relating 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.
 - The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received, in accordance with 34 CFR section 300.151.

¹ As to what constitutes a “signature,” see Iowa Rules 281-41.51(14).

3. *Who must get a copy of the state complaint?* The party filing the complaint must forward a copy of the complaint to the local educational agency (LEA **and** AEA) or public agency serving the child at the same time the party files the complaint with the SEA.²

4. *Is there a form to use to file a state complaint?* A model form for state complaints complaint is in the *Procedural Safeguards Manual for Parents (Parental Rights in Special Education)*. It is also available on the DE's website or from the Complaint Officer. One is not required to use the model form.

5. *When must a state complaint be filed?* As noted above, a state complaint must be filed within one year of the alleged violation.

6. *What are the permissible subjects of a state complaint?* A state complaint may allege any violation of the IDEA or state or federal special education rules, including allegations concerning the identification, evaluation, placement, or provision of a free appropriate public education to a child with a disability. Rule 281—41.153(2). In addition, state complaints may contain allegations concerning the following:

- Failure of a public agency to implement a decision after a due process hearing, a resolution meeting agreement, or a mediation agreement [Rule 281—41.153(5)].
- Failure of a public agency to comply with the IDEA's staff qualifications requirements [Rule 281—41.156(5)].
- Failure to meet the IDEA's requirement that students in accredited nonpublic schools have "equitable" participation in Part B funded activities [Rule 281—41.140(3)].

IV. What procedures will the DE follow when a complaint is received?

- 1) *Opening the Record.* When a complaint is received, DE staff members assign the complaint a number, make a folder for the complaint, and enter data information about the complaint. Hard copies are maintained in the folders.
- 2) *Procedural Safeguards Notice.* Send a copy of Procedural Safeguards Notice for parents to the parent if this is the first State complaint received this school year.
- 3) *Copy to Public Agencies?* The DE will determine within five business days whether the Complainant has provided a copy of the complaint to all required parties (the district, the AEA, and the DE). The DE will contact the Complainants, advising that until all required

² According to the United States Department of Education:

The purpose of requiring the party filing the complaint to forward a copy of the complaint to the LEA or public agency serving the child, at the same time the party files the complaint with the SEA, 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. We believe the benefit of having the complainant forward a copy of the complaint to the LEA or public agency far outweigh the minimal burden placed on the complainant because it will lead to a faster resolution of the complaint at the local level. For these reasons, we also do not believe it is more efficient to have the SEA forward the complaint to the public agency or provide the public agency with a statement summarizing the complaint.

parties have a copy, the investigation will not proceed and the sixty-day timeline will not begin.

- 4) *Is Complaint Proper In Form?* When a complaint is received, the DE decides within five business days whether the complaint is proper in form and within the DE's jurisdiction under the IDEA.
- 5) *Formally Defective Complaint.* If the complaint is not proper in form, the DE will notify the Complainant within 10 business days that the complaint or parts of the complaint do not meet the requirements. The reason will be provided. The notice will indicate (a) that the complaint will be dismissed if not revised within two weeks of receipt of the notice; and (b) the complaint will not be investigated and timelines not commence until the missing content is provided. The Complainant may revise the complaint. If the revised complaint contains allegations for which the state can proceed, timelines will be adjusted. When possible, the DE will inform the Complainant of the appropriate agency, entity or process to address concerns that do not meet the complaint requirements (e.g., Board of Educational Examiners).
- 6) *Starting the Timeline.* If the complaint is considered proper in form, Day One of the sixty-day timeline commences on the calendar day immediately following the date on which the complaint was received by all required parties. (Faxes and e-mails will be treated identical to mail arriving in the DE or bureau; e.g., faxes and e-mails arriving after office hours will be date-stamped with the first date the office is open following receipt of the fax or e-mail).
- 7) *Mediation & Other Dispute Resolution Efforts.* Because OSEP encourages states to offer mediation when a complaint is filed, the DE promotes building cooperative, collaborative relationships by supporting the use of the AEA Resolution Facilitator process or the Preappeal Conference. Either or both of these options are voluntary. The DE has brochures that explain each option. As soon as possible after receipt of the complaint, the Complainant will be informed, usually by telephone, of the following options:
 - *AEA Resolution Facilitator process.* The Resolution Facilitator is objective third party who has received mediation training and is employed by an AEA. The Facilitator will preside over a meeting and help all parties seek common ground and solutions. If the meeting is successful, the parties will devise and implement a written plan acceptable to all. The services are available by contacting the AEA's Resolution Facilitator Coordinator. (A State mediator can be requested to serve as a Resolution Facilitator if parties desire.) If the parties cannot agree on an appropriate course of action, the complainant may decide to resort back to using the complaint process. (Two brochures are available called *Easy Does It! Working things out with a Resolution Facilitator and/or, Preparing for AEA Resolution Facilitator Process.*)
 - *Preappeal (Mediation) Conference.* The DE provides a trained neutral mediator. Rules 281—41.506, 41.1002. The desired result of the conference is a written agreement that is acceptable to all parties. If the parties cannot agree on an appropriate course of action, the complaint process can be used. (A brochure explains the process: *Working Things Out When Things Go Wrong...The Special Education Preappeal Conference for Conflict Resolution* as well as *Preparing for a Preappeal Conference.*)

If the Complainant decides to use the AEA Resolution Facilitator process and expresses that no further involvement by the DE is necessary, the Complainant will be asked request in writing that the complaint be withdrawn.

If the Complainant decides to use the Preappeal Conference instead of the complaint, the person will be asked whether he/she would like the DE to convert the complaint to a Preappeal. The person is advised of the preappeal procedures, such as stating that the DE will send notice to the district and AEA of the preappeal request as well as saying that a phone call will be conducted within the next few days in order to schedule the conference call with the mediator and all identified parties. A copy of the original request for the complaint will be maintained in the Complaint Book and the log will indicate when the Complainant is selecting the Preappeal option. The closing date will be filled out, using the date of the phone call. Documentation papers will be maintained in the preappeal folder. Once a preappeal number has been assigned, this will be entered on the Complaint Log.

The parties may voluntarily resolve a portion of the state complaint. In that event, the DE will investigate the unresolved allegations.

- 8) *A party may use either of these processes without dismissing the complaint.* If the parties decide to use mediation or other alternative dispute resolution processes, the parties will be asked whether the sixty-day timeline for resolving the state complaint should be extended. It will be extended upon agreement. Rule 281—41.152(2)“a”(2). However, if the Complainant has expressed the desire to completely drop the complaint route, refer to procedures outlined in #7 above.
- 9) *Response & Proposed Resolution.* The DE must include an opportunity for the district/AEA to respond to the complaint including, at a minimum, a proposal to resolve the complaint. [Rule 281—41.152(1)“c”; 34 CFR 300.152(a); 20 U.S.C. 1221e-3]. The DE will send a letter informing the district and AEA of this opportunity. The responding agency may propose a corrective action plan (CAP) to address the allegations in the complaint. The DE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure that the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the DE will continue its investigation. Typically, the DE provides 15 school days to the parties to attempt to resolve this complaint, although this could be extended to 30 calendar days. After the conclusion of this time, DE staff will call the public agencies and remind them of the need to file a response.

CAUTION: If the public agencies do not respond to the allegations in the complaint, the DE may deem the public agencies to have admitted or conceded the truth of the allegations in the complaint.

- 10) *Response and Investigation.* If the public agencies do not offer a proposal to resolve the complaint, or the proposal to resolve the complaint was not acceptable to the complainant, or parties were not agreeable to use other alternative ways of resolving the allegation (AEA Resolution Facilitator Process or a preappeal conference), the Complaint Officer will investigate the complaint. As noted above, the Complaint Officer will remind the public

agencies of their opportunity to file a response, if they have not done so already. The Complaint Officer will request the parties to submit any materials they wish the DE to consider, any witnesses they wish the DE to interview, etc., within a specified timeline. At the discretion of the DE, a private, contracted, impartial investigator will be hired. If the DE is named the DE will make arrangements with an outside party to resolve the complaint; however, the DE remains responsible for complying with all procedural and remediation steps required by rules.

If new information submitted by the Complainant is on a different or unrelated incident, generally, the new information would be treated as a separate complaint. If the information submitted were on the same incident, as a general rule the new information would be treated as an amendment to the original complaint. The State will determine whether the new information constitutes a new complaint or whether it is related to a pending complaint.

- 11) *Timeline Monitoring.* The Complaint Officer will monitor the database to ensure timely resolution of the Complaint.
- 12) *Interviews.* When a party wants the Complaint Officer to contact certain individuals as part of the investigation, every effort will be made to do so. An attempt shall be made to contact all pertinent people during this stage to obtain alleged required information. Usually, a telephone interview with the Complainant will be held during which additional information may be gathered and the issues clarified.
- 13) *Timeline for Decision.* A decision will be issued within sixty days after receipt of the complaint. Rule 281—41.152(1). An extension of this timeline will be permitted in only two circumstances: (1) the parties agree to an extension while they pursue mediation [See # 8, above]; and (2) if “exceptional circumstances exist concerning a particular complaint.” Rule 281—41.152(2). Exceptional circumstances include but are not limited to the following:
 - The investigation is hindered by the unavailability of necessary parties or information.
 - Either the agency or Complainant submits additional data that changes the course of the investigation.
 - The Complainant submits large volumes of additional information at a date making it impossible to review and stay within the timeline.
- 14) *Location of Investigation.* The DE typically will conduct the investigation without going on-site. Depending on the nature of the allegations, as determined by professional judgment, the DE may decide to visit on-site at the beginning of the investigation or the decision may come later as the investigation unfolds. The Complaint Officer will seek direction from the Bureau Chief whether an on-site investigation is needed and whether additional DE staff should participate.
- 15) *Review of Record Made By Parties.* The Complaint Officer shall review all relevant information and make an independent determination whether the public agency is violating a requirement of federal or state special education statute, regulation or rule. The investigation may include conducting interviews and requesting parties to submit additional pertinent information or documents.

- 16) *Decision.* A written decision of the investigation is sent (using the 60-calendar day time limit) to the parties. The decision shall address each allegation in the complaint. The decision shall provide the DE's findings of finding of fact, conclusions of law, and the reasons for the DE's decision. The findings are copied to the Superintendent of the district and the AEA Special Education Director. The DE's consultants in charge of LEA and AEA monitoring will be given a copy of the findings. Before filing, all decisions will be submitted to the Bureau Chief for review. The Chief may indicate additional DE staff members need to review the decision. This process will also include deciding who will sign the decision.
- 17) *Unconfirmed Complaint.* If the allegations of the complaint are not confirmed, the DE will take no further action and will so advise the parties.
- 18) *Remedies for Confirmed Violations.* The DE develops a remedy for each confirmed allegation in a complaint. Rule 281—41.151(2), 41.152(2). Depending on the facts of a particular complaint, the DE may offer the parties the option to jointly develop a corrective action plan. If a failure to provide appropriate services is found, the DE must address how to remedy the denial of those services, including, as appropriate, the awarding of compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the child. The DE must also consider the appropriate future provision of services for all students with disabilities in the district. Rule 281—41.151(2). The DE's remedial authority also includes technical assistance activities, negotiation, and corrective actions to achieve compliance. Rule 281—41.152(2).
- 19) *When must noncompliance be corrected?* The general supervision system includes making certain any and all identified noncompliance issues are corrected as soon as possible but in no case later than one year from identification. Based on the facts of each case, the DE may order corrective action to be completed at an earlier time. There may be different deadlines within the same order, depending on the nature of the ordered remedy.
- 20) *Monitoring Corrective Action Timelines.* The ordered corrective action timelines are monitored. The DE will periodically contact the public agencies, reminding them of the timelines. Failure to adhere to the required timeline will result in the DE taking available action against the public agency, including but not limited to the actions specified in Rules 281—41.222, 41.600, 41.603 *et seq.*
- 21) *Evidence of Correction.* The public agencies are required to demonstrate correction ordered in the decision. Acceptable evidence depends on the facts of each case, but may include a new IEP for the child, amended policies, professional development agenda and attendance sheets, a "satisfaction" signed by the Complaint, or a cancelled check. When the correction has occurred, the case will be closed and the parties notified.
- 22) *Student transfers after compensatory education order.* If a student transfers to another school in Iowa before the compensatory education is provided, the former school district remains obligated to provide compensatory services. These options can be used: (1) the former district makes written arrangements with the new school to provide the services and reimburse excess costs; (2) the former district could contract with a private provider; or (3) it

could continue to offer the services. The parent needs to be involved in the decision about the compensatory education provided and when it occurs.

V. Is the DE's decision appealable?

The DE's decision is the final agency action for state complaints. There is no internal administrative appeal or request for reconsideration. The Iowa Administrative Procedure Act (Iowa Code ch 17A) provides for judicial review of the DE's decision in a state complaint. Chapter 17A gives a party who is "aggrieved or adversely affected by agency action" the right to seek judicial review by filing a petition for the same in the Iowa District Court for Polk County (home of state government) or in the district court in the county in which the party lives or has its primary office. The parties are advised of this provision in each state complaint decision.

VI. What is the relationship between state complaints and due process complaints?

- *Raising Issues Also Pending in a Due Process Complaint.* If a state complaint is received that is also the subject of a due process hearing under 34 CFR 300.507 or 300.530 through 300.532; or contains multiple issues, one or more of which are part of that hearing, the DE 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 the due process complaint must be resolved using the time limit and procedures described above. Rule 281—41.152(3).
- *Raising Issues Decided in Previous Due Process Decisions.* If an issue raised in a state complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the DE must inform the Complainant to that effect. Rule 281—41.152(3).
- *Alleging a Public Agency Is Not Complying with a Due Process Decision.* If a complaint alleges a district and/or AEA failed to implement a due process hearing decision rendered by an ALJ the DE will investigate the allegation. If confirmed, the DE will grant appropriate relief. Rules 281—41.152(3), 41.153(5).

VII. What happens if an attorney appears on behalf of a party?

Because the state complaint process is not an administrative proceeding or judicial action, in the event an attorney appears for a party, there is no right for an attorney to demand that he or she be present when the DE conducts the investigation (and in particular queries individuals for whom the attorney represents). A request for the presence of an attorney will be considered and a decision made at the sole discretion of the investigator. If an attorney appears for a party, copies of all papers will be sent to the attorney and the attorney's client.

An award of attorneys' fees is not available under the IDEA for state complaint proceedings.

VIII. What steps is the DE taking to disseminate the state complaint process?

The complaint process and a sample form for filing a complaint are included in the *Parental Rights in Special Education* manual. Therefore, LEAs, AEA's, and the DE provide this information to parents. The manual is also on the DE website.

Whenever a parent or interested party calls the DE to ask questions or express concerns, a packet of information is sent, which includes the procedural safeguards manual.

Iowa Protection and Advocacy and other advocacy groups also are aware of the process, as well as the AEA Special Education Directors, and the parents and educators involved with the Parent Educator Connection project.

The Parent Training and Information Center of Iowa has been provided a copy of the complaint procedures and forms.

The seven independent living centers will be provided a copy of the complaint procedures, as well as some copies of the *Parental Rights in Special Education* brochure.