

Formal State Complaint
Procedures
for
Students with Disabilities

Exceptional Children Division
July 2021

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Introduction

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, Exceptional Children Division 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), Exceptional Children (EC) Division 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 EC Division in accordance with these procedures.

It is the responsibility of the EC Division 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 EC Division will ensure the State Complaint Procedures are available to parents, organizations, public agencies, and general public by posting them on the EC Division's website at <http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints>; providing a copy 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 <http://idea.ed.gov/>

North Carolina Policies Governing Services for Children with Disabilities (Policies)
<http://ec.ncpublicschools.gov/policies/nc-policies-governing-services-for-children-with-disabilities>

Article 9 of the NC General Statutes (GS) <http://www.ncga.state.nc.us/>

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 agency includes 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.¹

A written, signed mediation agreement, resolution agreement, and due process hearing decisions, under this paragraph, are 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

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; and
- The signature and contact information for the complainant (mailing address, telephone numbers, and email address); and

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

- The name and address of the residence of the child;
- 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 and the name of the school the child is attending;
- A description of the nature of the problem regarding the child, including specific facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the complainant at the time the complaint is filed.

¹ The SEA *may* accept and resolve complaints regarding alleged continuous violations outside the one-year time limit when extraordinary circumstances exist.

The complainant *must* 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 same time the complainant files the complaint with the SEA.

The complainant may use the State Complaint Form, located in Appendix A of this document and on the EC Division website at <http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints>.

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, or the sixty (60) day timeline will not commence until the missing content is provided. 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 the 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 and will provide the LEA with a copy of the complaint and initiate the investigation.

A signed, written complaint may be submitted by:

1. Mailing to: Director of Exceptional Children Division
 North Carolina Department of Public Instruction
 6356 Mail Service Center
 Raleigh, NC 27699-6356
2. Faxing to: (984) 235-2693
3. Emailing as a PDF file to: state_ec_complaints@dpi.nc.gov

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 finding.

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;
 - *An issue is a statement or statements containing sufficient factual detail (e.g., who, what, where, when, 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 EC Division investigator assigned to investigate the complaint;
- Notifies both parties of the 60-day timeline for investigating the complaint and issuing an investigation report;
 - *The 60-day timeline begins on the business day the complaint is received;*
 - *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 notice 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), 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 EC Division no later than the 15th calendar day.
 - *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; and
- 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 an onsite visit, staff and parent interviews, and review of electronic educational records.

State Complaints and Due Process Petitions

If a complaint is filed with the same alleged violations raised in a due process petition, the EC Division 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 EC Division 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).

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

The EC Division 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.

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

If an alleged violation is raised in a complaint that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on the parties, and the EC Division will inform the complainant and public agency to that effect.

Insufficient Complaints

If the complaint does not meet the required information outlined on page 4, including those that contain allegations outside of DPI's authority, such as promotion and retention, the EC Division shall provide the complainant and Superintendent or Head of School with written notification that the complaint has been determined insufficient and if applicable, the additional information needed for the complaint to meet the requirements in the IDEA.

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 or 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 that constitutes the alleged violation and the facts upon which the alleged violation is based. A systemic complaint *must* contain sufficient facts to support the allegation.

If there are insufficient facts upon which to support the allegation, the complainant will be given an opportunity to provide additional information to substantiate the allegation. If the complainant does not provide the additional information within the allotted amount of time given by the complaint investigator, then the complaint will be found insufficient.

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.

If the systemic complaint identifies specific children as part of a class, category, or similarly situated children, the EC Division will review all relevant information regarding the named children. If no violations are found involving the named children, no further action is required to resolve the complaint. However, if the EC Division identifies violations for the named children, the resolution must involve all the other children who are part of the class, category, or similarly situated children. The public agency named in the complaint will be responsible for notifying the parents of named children of the resolution.

Early Dispute Resolution

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

Early Dispute Resolution Mechanisms⁴	
Informal	Formal
<p>State Complaint Problem-Solving Meeting Informal dispute resolution mechanisms are opportunities for the local education agency and complainant to discuss concerns and develop a problem-solving agreement.</p>	<p>Mediation Formal dispute resolution provides the parties an opportunity to resolve issues with the assistance of a trained mediator.</p>
<p>Key Features: Early dispute resolution meetings do not necessarily require involvement of the IEP Team. However, early state complaint problem-solving may require the IEP to meet and review and revise the student’s IEP once the dispute has been resolved.</p>	<p>Key Features: Mediation is a voluntary process; therefore, both parties must agree to participate. 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.</p>

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 EC Division. The complainant may mail or email the withdrawal request to the EC Director and complaint investigator, or to the state complaint email address located 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 that 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. In order 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 EC Division will close the complaint and provide a withdrawal letter to the parties.

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.

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 Director/Coordinator and/or an EC Division 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 or the complainant and the 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 public agency shall be notified, in writing, by the EC Division.

Investigation Report

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

- A statement of the issue(s) investigated; and
- Findings of fact, applicable federal and state laws, regulations, and/or policies, 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 file 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; and
- An EC Division contact person for technical assistance in completing the corrective actions.

The NCDPI EC Division will issue the investigation report (letter of finding) 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 EC Division.

Corrective Action Plan

The public agency must report completion of the corrective action(s) to the complaint investigator by the date(s) set forth in the Corrective Action Plan (CAP). The date(s) may be extended at the discretion of the EC Division, 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.

If the corrective action plan is amended, the complaint investigator or corrective action coordinator will inform the complainant and the LEA, 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) and the complainant, and a copy will be sent to the EC Director/Coordinator.

If the required corrective actions and/or supporting documentation have not been received by the EC Division 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; and/or
- 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 as soon as possible and 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)].

Appendix A: State Complaint Form

This form is designed to provide the NCDPI EC Division with the required information to accurately process your complaint. Information with an asterisk(*) is required; however, use of this form is optional.

SECTION ONE: Complainant (the person filing the complaint), Student, and Public Agency (public school system, charter school, or state operated program) Information*

Complainant Information*

Name		Relationship to Student	
Address			
Email		Phone Number	
Check box if you agree to receive correspondence related to this complaint from NC DPI via confidential email (<i>optional</i>).			<input type="checkbox"/>
If you are a third-party complainant, check the box if a signed consent form from the parent and/or student is attached. A signed consent form is needed to exchange information, including the final report, with the third-party complainant.			<input type="checkbox"/>

Student Information*

Name		Date of Birth	
Disability		Grade	
Address: (<i>if different from Complainant</i>) <i>In case of homeless youth, provide contact information.</i>			

Public Agency: The alleged violation(s) are against – *

Name of Public Agency	
Name of School <i>(Location of alleged violation)</i>	
Name of School the student is attending, <i>if different from above</i>	
Check box if the student is not currently enrolled in the named Public Agency (<i>optional</i>)	
<input type="checkbox"/>	

SECTION TWO: Statement of Alleged Violation(s) and Supporting Facts*

You do not need to know the specific statute or policy that may have been violated; however, you must explain what you believe the school has done or has failed to do that is in violation of IDEA and NC *Policies*. For example, “The teachers are not following my child’s IEP.” If there is more than one alleged violation, use the additional page(s) to indicate the other alleged violation(s) and supporting facts.

Alleged Violation #1 *	
Date or Time Period of Alleged Violation	
Supporting Facts* (see page 2)	

Supporting Facts: Provide details about the alleged violation.

Check the box if there are additional alleged violations attached (<i>optional</i>).	<input type="checkbox"/>
Check the box if additional documentation is attached (<i>optional</i>).	<input type="checkbox"/>

SECTION THREE: Proposed Solution* (*if known*)

What is your proposed solution to the alleged violations?

SECTION FOUR: Signature, Date, and Confirmation*

Please sign, date, and confirm that a copy of the state complaint has been provided to the Superintendent or School Administrator of the Public Agency in which the allegations occurred in the boxes below. Please ensure you have included all required information(*) before submitting to NCDPI and the Public Agency.

Complainant's Signature*		Date*	
<i>I confirm that a copy of the state complaint was provided to the Superintendent or School Administrator for the Public Agency in which the alleged violations occurred.</i> Initial the box to the right.*			

SECTION FIVE: Submission of Complaint*

Send the finalized complaint form to the NC DPI EC Director by postal mail, fax and/or email:

Mailing Address:	Sherry H. Thomas, Director NCDPI Exceptional Children 6356 Mail Service Center Raleigh, NC 27699-6536
Fax Number:	(984) 236-2693
Email Address:	state_ec_complaints@dpi.nc.gov

FOR NC DPI USE ONLY			
Complaint Number	DRC Assigned	Date Received	Final Report Due

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Statement of additional alleged violations and supporting facts, if any:

Alleged Violation #2	
Date or Time Period of Alleged Violation	
Supporting Facts: Provide details about the alleged violation.	

Alleged Violation #3	
Date or Time Period of Alleged Violation	
Supporting Facts: Provide details about the alleged violation.	

Appendix B: State Complaint Problem-Solving Agreement OPTIONAL

State Complaint Problem-Solving Agreement

State Complaint Number: _____

Alleged Violation/Issue #1

--

Description of Outcome – Issue #1

--

Resolved Not Resolved

Alleged Violation/Issue #2

--

Description of Outcome– Issue #2

--

Resolved Not Resolved

The parties agree that all alleged violations/issues raised in the state complaint have been resolved.

The complainant agrees to withdraw the state complaint.

The parties do not agree that all alleged violation/issues raised in the state complaint have been resolved.

The complainant does not agree to withdraw the state complaint.

Signatures:

Parent		Date	
Parent		Date	
LEA Representative		Date	
		Date	
		Date	

Appendix C: Mediation Request Form

Student Information

Name:		Area(s) of Eligibility:	
Date of Birth:		School:	
Grade:		Local Education Agency (LEA):	

Background Information

Please provide the requested information. Enter "N/A" (Not Applicable) where appropriate.

Date(s) of previous mediations:		Date filed State Complaint:	
Nature of the dispute:			
For parent, adult student or interested party: Did you notify the LEA of this request for mediation? • Yes • No If yes, who was the person notified? _____ When? _____ How was the person notified? _____			
For Local Education Agency (LEA): Did you notify the parent or other party of this request for mediation? • Yes • No If yes, who was the person notified? _____ When? _____ How was the person notified? _____			

Appendix D : Due Process Petition

Due Process Petition

Complete this section only if Due Process has been requested.

Case Number:		Date of expedited hearing request:	
Date of Due Process request:			
<i>Regulations permit both the parent and LEA to agree that mediation will be used instead of a resolution session or may be the outcome of the resolution session. Please initial below if both parties agree to mediation. **The Resolution Meeting Form must be included with this request.**</i>			
Parent (initials):		LEA Representative (initials):	

Contact Information

Must include names and contact information for both parties. Missing information may delay the process.

LEA Representative		Parent/Guardian	
Name:		Name:	
Mailing Address:		Mailing Address:	
Phone Number:		Phone Number:	
Email Address:		Email Address:	
Attorney for LEA , if applicable:		Attorney for Parent , if applicable:	
Name:		Name:	
Mailing Address:		Mailing Address:	
Phone Number:		Phone Number:	
Email Address:		Email Address:	

Support Needs

Please describe below.

Translation	
Interpreter	
Accessibility	

Submission Information

Name of individual completing this request form:

Print Name:			
Signature:		Date:	

This form must be completed and sent to:

NCDPI – EC Division
 Attn.: Mediation Coordinator
mediation@dpi.nc.gov
 Fax: (984) 236-2693

Appendix E: Complaint Withdrawal Form OPTIONAL

To: North Carolina Department of Public Instruction
Exceptional Children Division
6356 Mail Service Center
Raleigh, NC 27699-6356
Attn: Sherry H. Thomas

Re: **Request to Withdraw Formal State Complaint**
Complaint Number:

I withdraw my request for the North Carolina Department of Public Instruction's investigation of the state complaint referenced above.

I understand that my withdrawing the complaint does not affect my right to request an impartial due process hearing or file another complaint in the future.

Complainant Signature: _____

Date: _____