



<b>Procedure Title:</b> State Complaint Procedures	<b>Procedure Number:</b> C-5
<b>OEC Section:</b> Dispute Resolution	<b>Director Approval:</b> Sue Zake
<b>Effective Date:</b> 12/12/2014	
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### I. What is a state complaint?

A complaint is a signed, written statement alleging that a local education agency (hereinafter referred to as “district”) or the Ohio Department of Education (ODE) violated a requirement of the *Individuals with Disabilities Education Act (IDEA)* or the *Ohio Operating Standards for the Education of Children with Disabilities*.

### II. How can I file a complaint?

1. A signed, written complaint may be filed by any party, including an individual, a parent, organization or third party. Signed written complaints may also be filed by an individual or organization from another state.
2. The original signed, written complaint must be sent to:
  - Ohio Department of Education
  - Office for Exceptional Children
  - Dispute Resolution Section
  - 25 South Front Street, Mail Stop 409
  - Columbus, OH 43215
3. The Ohio Department of Education, Office for Exceptional Children (OEC), will not accept:
  - a. Complaints that do not contain an original signature;
  - b. Anonymous complaints;
  - c. Copies of complaints, OEC must receive the original;
  - d. Correspondence sent to a third party; or
  - e. Emailed complaints.
4. A copy of the complaint must be sent by the complainant (the individual or entity that is filing the complaint) to the superintendent, or the superintendent’s designee, of the school district against whom the complaint is being filed.
5. The complaint must include:
  - a. A statement that the public school district has violated a requirement of federal

and/or state laws(s) and/or regulations that apply to special education in which the violation occurred not more than one calendar year prior to the date the complaint is received by the OEC;

- b. Allegations supported by evidence (*Please note: the evidence refers to the **facts** on which the statement of alleged violation(s) is based*);
  - c. An original signature and contact information for the complainant;
  - d. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. Please note that the proposed resolution will be taken into consideration; however, the final resolution of the complaint will be determined by the ODE OEC. (Please note that item (IV)(A)(5)(d) is not necessary if alleging a systemic violation and not a violation related to a specific child.)
  - e. If alleging a violation with respect to a specific child:
    - i. The name or names of the children involved in the complaint;
    - ii. The address of the child;
    - iii. 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. 11434(a)(2), available contact information for the child; and
    - iv. The name of the school the child is attending.
  - f. If alleging a violation with respect to a systemic issue:
    - i. Alleged violations that apply to a class, category or similarly situated children;
    - ii. A policy, procedure or practice applicable to a group of children that is inconsistent with federal and/or state laws(s) and/or regulations that apply to special education; and
    - iii. The name of the school and/or school district where the alleged systemic violation(s) occurred.
6. Information about mediation will be provided to everyone who files a complaint. If a party wishes to mediate the issues which are in the complaint using an OEC mediator, the party must notify the OEC.
7. Once a complaint is filed, a complaining party cannot amend the complaint or add issues to the complaint. A complaining party may file an additional complaint with the new issues.

### III. What happens once ODE OEC receives my complaint?

1. The most desirable method to resolve a complaint is for the complainant and the education agency to work together to come to a mutual agreement in the best interest of the student, prior to the filing of a formal state complaint. However, once a state complaint has been filed, the parties may request mediation, a facilitated meeting or other means of alternative dispute resolution at any point during the complaint investigation process.
2. Sufficiency: Upon receipt of a complaint OEC will determine whether or not the complaint is sufficient. If the complaint is determined insufficient either in whole, or in part, because it does not contain the required elements listed in (II)(5)(a)-(d) above, OEC shall provide notice to the complainant that sets forth:
  - a. The reason(s) for the determination of insufficiency (Note: the insufficiency letter will include an explanation of the information that is needed to make the complaint sufficient, unless the complaint has been determined insufficient for lack of

- jurisdiction);
- b. A statement that the complaint cannot go forward on items that are insufficient until a complaint is filed that meets the requirements of *Part 34, Section 300.153(b)* of the *C.F.R.* (Note: when some complaint issues are insufficient, OEC shall proceed with the portions of the complaint that are sufficient.);
  - c. A statement that the complaint (or the portion of the complaint that is insufficient) may be re-filed within one calendar year of the occurrence of the event that is the subject of the complaint;
  - d. A notice of resources to assist parents who are not represented by counsel in completing complaints and correcting deficiencies included in the determination of insufficiency including, but not limited to, the contact information for Disability Rights Ohio and the Ohio Coalition for the Education of Children with Disabilities (OCECD); and
  - e. A copy of the Doe Consent Order.
  - f. OEC will not find a complaint insufficient for minor errors or omissions. If the complaint is missing an element other than a fact or a resolution, the OEC will contact the complainant and inform the complainant that an element is missing. The complainant will then have five business days from the point of contact with OEC to forward the necessary information to OEC. If the missing element is not forwarded to OEC within five business days the complaint will be closed and the complainant will be informed of the closure by letter. Please note that the 60 day timeline will not begin until a complaint has all required elements.
3. A person or organization who files a complaint and who requests assistance in making a sufficient complaint, including assistance to parents with disabilities and parents who are not English proficient, will be provided notice of resources to assist them in completing a sufficient complaint.
  4. Once a letter of complaint is received, it is assigned a complaint number and an acknowledgment packet is sent to the individual or entity who has filed the complaint.
    - a. The acknowledgment packet will also be sent to the following parties if different from the person filing the complaint:
      - i. The parent/guardian;
      - ii. The student, if the student has reached the age of majority;
      - iii. The superintendent of the school district (or the superintendent's designee); and
      - iv. The special education director.
    - b. The acknowledgment packet will include the following information:
      - i. Notice of the date that OEC received the complaint;
      - ii. Identification of the assigned OEC staff for the complaint;
      - iii. A copy of the parent notice of procedural safeguards;
      - iv. Notice of the opportunity for the parties to engage in mediation or facilitation; and
      - v. A copy of the Doe Consent Order.

NOTE: If legal counsel represents either party, it will be the responsibility of each party's counsel to communicate with the assigned investigator and request that copies of all correspondence are forwarded to legal counsel.

5. The investigator assigned to the complaint will determine:
  - a. The complaint issues and whether OEC has the authority to investigate the identified issues.
  - b. Once the issues to be investigated have been determined, OEC will ascertain which law(s) has been allegedly violated and which legal citations will be used in the investigation.

#### IV. How will my complaint be resolved?

1. The OEC shall conduct an investigation of the complaint which shall include a review of all relevant documentation and may include an on-site investigation. When investigating a complaint, OEC:
  - a. Will conduct an independent on-site investigation if OEC determines that an on-site investigation is necessary;
  - b. Will give the complainant the opportunity to:
    - i. Submit additional information in writing;
    - ii. Respond to questions through an oral telephone interview; and/or
    - iii. Provide a written or recorded response to investigator questions if preferred by the complainant or when ongoing attempts at phone interviews are determined to be ineffective by the OEC Director.

Telephone interview(s) are the preferred means of receiving complainant responses to investigator questions except in unusual instances where the subject matter of the complaint is such that the complainant has no personal knowledge that is relevant to the investigation of the complaint.

- c. Will provide the district with the opportunity to respond to the complaint;
- d. Will review all relevant education documentation (such as evaluation data in the child's record, individual education programs (IEPs) and any additional information provided to OEC by the parties to the complaint) in order to resolve complaints challenging the appropriateness of a child's educational program or services or the delivery of a free and appropriate public education (FAPE), so long as the information is provided within the designated timelines;
- e. Will review all relevant information needed to make an independent determination as to whether the district is violating a requirement of Part B of the *IDEA*, Part 300 of the federal regulations or provisions of Ohio Revised Code (O.R.C.) Chapter 3323 and Ohio Administrative Code (O.A.C.) 3301-51;
- f. Will issue a written decision that addresses each allegation, contains findings of fact, draws a conclusion as to whether or not the district is in compliance regarding the alleged issues and provides rationale/analysis for the decision;
- g. May pursue an additional inquiry into the alleged activities of the district depending on the facts and documentation concerning the case that have been received by OEC as part of the complaint investigation. This may be in the form of technical assistance, comprehensive system of monitoring or by any other means OEC deems appropriate; and
- h. Will send a written decision simultaneously to the superintendent of the district (or the superintendent's designee), the parent/guardian, the special education director and the student who has reached the age of majority summarizing the complaint

issues and results of OEC's investigation. The written decision shall address the following:

- i. If the district is found in compliance, the complaint file is closed.
  - ii. If the district is found in noncompliance, the letter shall specify the required corrective action(s) to be taken by the district. The complaint file remains open until corrective action is completed. The letter will specify a required date for correction as determined by the OEC, but shall not exceed one year.
  - iii. If a third party complainant filed the complaint, the third party complainant will receive a letter informing them that OEC has concluded their complaint investigation. Personally identifiable information about the student may be released to a third party complainant or other person or entity only with the written consent of the parent or as authorized by IDEA, FERPA or state law.
2. Complaint extensions and abeyance
- a. OEC will issue a decision letter within 60 days from the date the complaint was received by the OEC Dispute Resolution Section, unless an extension is granted. OEC may extend the timeline where:
    - i. Exceptional circumstances exist with respect to a particular complaint; or
    - ii. Both parties agree to extend the timeline to engage in mediation, a facilitated meeting or other means of alternative dispute resolution.
  - b. OEC will send a letter informing the parties of an extension of the 60 day time limit for exceptional circumstances which will include the basis for the extension. The timeline will be extended for the minimum time necessary to overcome the exceptional circumstance.
  - c. Mediation, a facilitated meeting and alternative dispute resolution will not change the deadline for OEC to resolve complaints unless both parties agree to change the deadline. When OEC receives a request for an extension of the deadline for resolving a complaint based on mediation, a facilitated meeting or alternative dispute resolution, it will ask the other party if it agrees to the proposed extension. If both parties agree, OEC will set new dates for the provision of documentation and the decision letter. If the parties withdraw from mediation the decision letter will be issued within 30 days from the notice of withdrawal unless the complaint involves unique complexity or scheduling issues or the 30 day timeline shortens the original 60 day timeline for the complaint. In no event shall the decision letter be delayed beyond 60 days from the notice of withdrawal from mediation.

## **V. What happens if the district is found in noncompliance?**

1. Upon the conclusion of the investigation, the OEC will issue the results of its investigation. Where the district is found to be noncompliant in one or more of the issues identified in the complaint, OEC will outline the corrective action required by the district to address the noncompliant behavior as well as order the district to engage in any technical assistance.
2. The OEC will address each allegation contained in the complaint and ensure that the district effectively and timely implements a corrective action plan within a required timeframe, not to exceed one calendar year, that addresses each violation. In cases involving complex resolutions and systemic issues, OEC shall require periodic progress reports indicating the status of the district's efforts to achieve compliance.
3. OEC shall review the district's corrective action for compliance. Once the corrective action

is completed within the required timeframe, OEC will close the complaint.

4. If the district does not comply with the complaint process or the corrective action, progressive sanctions, as appropriate, will be implemented by OEC.
  - a. OEC, through its general supervisory authority under IDEA, Part B, will require remedies for denial of appropriate services which shall include corrective action appropriate to address the individual needs of the child, including compensatory services or monetary reimbursement and appropriate future provisions of services for all children with disabilities within the public agency that is the subject of the complaint.
  - b. If the district fails to implement the corrective action plan within the time provided by the corrective action plan, or if OEC otherwise determines that the district is unable or unwilling to comply with the corrective action, OEC will implement progressive sanctions to ensure compliance, including but not limited to targeting resources to the district or withholding and reallocating state and federal IDEA Part B funds, to ensure provision of necessary services to the child or to all children with disabilities.

## **VI. Is the ODE's decision appealable?**

There is no internal administrative appeal or request for reconsideration. However, the parties may request mediation and/or facilitation or file a due process request regarding the finding(s) in a state complaint.

## **VII. If a party has already filed a state complaint, can a due process hearing still be requested?**

1. Issues also pending in a due process complaint. If a state complaint is received that is also the subject of a due process hearing, or contains multiple issues, one or more of which are part of that hearing, OEC must set aside any part of the complaint that is being addressed in that due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not part of the due process complaint must be resolved using the time limit and procedures described above.
2. Issues that have already been decided in a due process decision. 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 OEC will inform the complainant to that effect.
3. Allegations that a public agency is not complying with a due process decision. If a complainant alleges a district failed to implement a due process hearing decision rendered by an impartial hearing officer or state level review officer, OEC will investigate the allegation and issue appropriate relief.

Forms: PF-C5\_Complaint form